

of building (e.g. offices) to residential use. More recently, it has introduced a PDR enabling buildings falling within the newly created Class E (see paragraph 3.11) to be converted to residential units.

- 3.32. Several research reports¹³ have highlighted concerns about the quality of properties developed under PDR, particularly where offices are converted to residential accommodation. Another key issue is that developer contributions cannot generally be sought where development is authorised under PDR. This loss of contributions associated with residential conversions may result in increased pressure on local services. If such services need to be upgraded as a result, the cost of doing so would be borne by the taxpayer.
- 3.33. For these reasons we are not minded to introduce new PDR providing for the conversion of shops, offices and other 'town centre' uses to residential units. This does not mean that the Scottish Government does not support a growth in town centre living. Rather, our view is that such development should be plan-led, with proposals assessed through the planning application process. This is the approach advocated in Draft NPF4.

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

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

¹³ For example:

- [Quality standard of homes delivered through change of use permitted development rights - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/quality-standard-of-homes-delivered-through-change-of-use-permitted-development-rights)
- [Impact of extending development rights to office-to-residential change \(rics.org\)](https://www.rics.org/news/2019/04/impact-of-extending-development-rights-to-office-to-residential-change/)

Table 1: Current Use Classes Order and Applicable PDR

Use Class	Uses Covered	PDR (to change to)
1 – Shops	Sale of goods other than hot food; post office; ticket sales; hairdressing; travel agency; funeral directors; hiring of domestic or personal goods	None
2 – Financial, professional, and other services	Financial, professional and any other services which it is appropriate to provide in a shopping area and where the services are provided principally to visiting members of the public (e.g. banks, building societies, estate agents, dentists, doctors)	Class 1
3 – Food and drink	Food and drink for consumption on the premises (e.g. cafes, restaurants). Does not include hot food takeaway	Classes 1 and 2
4 - Business	Office (other than a Class 2); research & development or industrial process which can be carried on in residential area without detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.	Class 6 (up to 235 sq m)
5 – General Industrial	Industrial process other than a Class 4 use.	Class 6 (up to 235 sq m) or Class 4.
6 – Storage and Distribution	Storage or distribution centre.	Class 4.
7 – Hotels and Hostels	Hotel, boarding house, guest house, or hostel (no significant element of care)	None
8 – Residential Institutions	Residential accommodation and care; hospital or nursing home; residential school, college or training centre.	None
8A – Secure residential institutions	Use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre.	None
9 – Houses	House (other than a flat) by a single person or by people living together as a family; bed & breakfast	None
10 – Non-residential institutions	Crèche, day nursery or day centre; education; display of works of art; museum; public library; a public hall or exhibition hall; place of worship	None
11 – Assembly and leisure	Cinema; concert hall; bingo hall; casino; dance hall or discotheque; swimming baths, skating rink or gymnasium.	None
Sui generis	Uses not included the classes above, including: public house; theatre; amusement arcade or funfair; the sale of fuel for motor vehicles; the sale or display for sale of motor vehicles; taxi or vehicle hire; flats and student accommodation; hot food takeaways; motor vehicle recreation or firearm sport.	The sale or display for sale of motor vehicles (up to 235 sq metres) to Class 1; Hot food takeaway / betting office/ pay day loan shop to Class 1 or to Class 2.

4. Port Development

- 4.1. Although not forming part of the original PDR work programme, the Scottish Government committed, in March 2021, to consider whether port operators' current PDR are fit for purpose, and whether amending them could support the Scottish and UK Government's objectives for Green Freeports. [A bidding prospectus for Green Freeports in Scotland](#) was published in March 2022.
- 4.2. The March 2021 commitment followed the UKG [consulting on](#) and subsequently amending¹⁴ the PDR that apply to port operators in England so that they are more closely aligned with those of airport operators. These changes apply to all ports in England; not just those designated as Freeports.
- 4.3. Prior to these amendments, the PDR for both seaports and airports in England were effectively the same as those in Scotland. In Scotland, the relevant provisions are contained in Class 35 and Class 44 of Schedule 1 to the GPDO, respectively (reproduced in Box 3 and 4 at the end of this Chapter). See also the general conditions and limitations on PDR that apply on these and other classes of PDR mentioned in paragraph 1.16 in the Introduction to this consultation paper.
- 4.4. Box 5 at the end of this Chapter sets out the specific changes made to port operator PDR in England. In summary, the amendments provide for:
- Development in connection with the provision of services and facilities to be carried out under PDR – unless it involves:
 - the erection of a building other than an operational building; or
 - the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.
 - Development to be carried out by the port operator's "agent of development"
 - A requirement for the developer to "consult" with the planning authority prior to carrying out development (unless it is of a specified description).
- 4.5. The UK Government consultation indicated that this alignment would enable a wider range of development and operational activities to take place under PDR. However, it is unclear what these additional types of development are – in other words, what type of development can be carried out at English ports under PDR that could not prior to the amendment.
- 4.6. We are keen to ensure that, with respect to PDR, there is a level playing field between Scottish and English ports. On that basis, we are minded to take

¹⁴ See article 10 of the Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021

forward similar measures to those that have been introduced by the UK Government in England.

- 4.7. Any new PDR would apply to all ports within the Class 35 definition and not just to prospective Green Freeports. However, before committing to making equivalent changes we would welcome views on what the practical effect of aligning port and airport would be. We are also interested to hear views on what – if any – wider changes could be made to Class 35 PDR to support Scotland's ports.

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

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? Please explain your answer.

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

- 4.8. As discussed at paragraph 1.14, once the relevant powers are implemented Masterplan Consent Areas (MCAs) will provide planning authorities with a new tool to proactively promote growth and development in specific locations. Because a MCA would be tailored to the particular circumstances of individual areas, they may be capable of providing much more extensive planning freedoms than is appropriate through a national PDR. As such, MCA could play a valuable role in supporting future development at Scotland's ports, including those which may be designated as Green Freeports.

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

Box 3: Current PDR for port operators in Scotland (Class 35)

Dock, pier, harbour, water transport, canal or inland navigation undertakings

Class 35.—(1) Development on operational land by statutory undertakers or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

(a) for the purposes of shipping; or

(b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.

(2) Development is not permitted by this class if it consists of or includes—

(a) the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic;

(b) the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—

(i) a building used for educational purposes; or

(ii) a car park, shop, restaurant, garage or petrol filling station.

(3) For the purposes of this class references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected and the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964.

Box 4: Current PDR for airport operators in Scotland (Class 44)

Class 44.— Development at an airport

(1) The carrying out on operational land by a relevant airport operator or its agent of development (including the erection or alteration of an operational building) in connection with the provision of services and facilities at a relevant airport.

(2) Development is not permitted by this class if it would consist of or include-

- (a) the construction or extension of a runway;
- (b) the erection of a building other than an operational building;
- (c) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.

(3) Development is permitted by this class subject to the condition that the relevant airport operator shall consult the planning authority before carrying out any development, unless that development falls within the description in sub-paragraph (4).

(4) Development falls within this sub-paragraph if-

- (a) it is urgently required for the efficient running of the airport; and
- (b) it consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed 4 metres in height or 200 cubic metres in capacity

N.B. “operational building” is defined for the purposes of this provision as meaning a building, other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at a relevant airport

Box 5: Amendment to Port PDR in England made by SI 2021/428 (underlined text denotes the amendments)

B. Permitted Development

Development on operational land by statutory undertakers or their lessees or agents of development (including the erection or alteration of an operational building) in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

(a) for the purposes of shipping, or

(b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking, or

(c) in connection with the provision of services and facilities.

Development not permitted

Development is not permitted by Class B if it consists of or includes—

(a) the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic; or

(b) the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—

(i) an educational building, or

(ii) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation, or

(c) where the development falls within paragraph B(c)—

(i) the erection of a building other than an operational building; or

(ii) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.

Condition

B.1A.—(1) Development is permitted by Class B subject to the condition that the relevant statutory undertaker consults the local planning authority before carrying out any development, unless that development falls within the description in paragraph B.3.

Interpretation of Class B

For the purposes of Class B—

(a) references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected, and

(b) the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964 (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc., of harbours), and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945 .

Development falls within this paragraph if—

(a) it is urgently required for the efficient running of the dock, pier, harbour, water transport, canal or inland navigation undertaking, and

(b) it consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed 4 metres in height or 200 cubic metres in capacity.

5. Assessment of Impacts

Sustainability Appraisal Update

- 5.1. The Scottish Government set out its Proposed Work Programme for reviewing and extending permitted development rights (PDR) (referred to as “the proposed programme”) in November 2019. The proposed programme was the first step in an iterative and ongoing policy process which has been, and will continue to be, informed by a Sustainability Appraisal (SA) incorporating Strategic Environmental Assessment (SEA) requirements¹⁵. The SA was undertaken by independent consultants LUC commissioned by the Scottish Government.
- 5.2. An SA Report setting out the potential environmental, social and economic effects arising from the proposed PDR review programme was [consulted on from 5 November 2019 until 28 January 2020](#). The 2019 SA report considered broad options for changes to PDR across a range of development types.
- 5.3. A Draft SEA Post Adoption Statement was also published alongside the Phase 1 consultation in October 2020; it set out how the views gathered on the environmental, social and economic considerations incorporated within the Sustainability Appraisal were taken into account in finalising the PDR work programme and in progressing the Phase 1 proposals.
- 5.4. The Draft SEA Post Adoption Statement is a live document; it will continue to be updated as future work on the remaining phases of the PDR programme is progressed. We will also give consideration to whether any further appraisal or assessment is required at each step of the iterative policy process. Accordingly, the Phase 2 consultation is accompanied by an updated [Draft Strategic Environmental Assessment \(SEA\) Post Adoption Statement](#).
- 5.5. Furthermore, we have also undertaken some additional appraisal of the Phase 2 proposals (see **Annex A**). This includes the consideration of those proposals that were not considered as part of the original Sustainability Appraisal (e.g. port development).

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.)

¹⁵ The Sustainability Appraisal incorporates SEA requirements under the Environmental Assessment (Scotland) Act 2005

Other Assessments

- 5.6. In addition to Strategic Environmental Assessment we have undertaken a number of other assessments of our draft proposals (or screened proposals to see whether an assessment is required). Our initial and draft assessments are set out in annexes A-F and we would welcome feedback on these as part of the consultation. The draft assessments and screening assessments undertaken include:
- A partial Business and Regulatory Impact Assessment (BRIA) that considers the costs and benefits, particularly with regard to business, of the proposed changes (see **Annex B**);
 - A draft Equality Impact Assessment (EqIA) that considers the impact of the draft proposals on various equalities groups defined by protected characteristics such as age, sex, religious or other belief, race or sexual orientation (see **Annex C**);
 - A draft Children's Rights and Wellbeing Impact Assessment (CRWIA) that considers the impact of the proposed changes on children. Our initial conclusion following a screening of proposals is that a full assessment is not required (see **Annex D**);
 - A draft Island Communities Impact Assessment (ICIA) that considers the impact of proposed changes on Scotland's islands. (see **Annex E**); and
 - A Fairer Scotland Duty Assessment that considers how we can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions. Our initial conclusion following a screening of proposals is that a full assessment is not required (see **Annex F**)
- 5.7. A Data Protection Impact Assessment (DPIA) was not considered relevant to these proposals because none pose any risk to privacy or data protection.
- 5.8. We invite views on these draft and partial impact assessments as part of this consultation. In particular:

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

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?

6. Responding to this Consultation

- 6.1. We are inviting responses to the consultation by 3 August 2022.
- 6.2. Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space by accessing and responding to this consultation online at : <https://consult.gov.scot/planning-architecture/permitted-development-rights-review/>. You can save and return to your responses while the consultation is still open.
- 6.3. If you are unable to respond using our consultation hub, please send your response, together with the Respondent Information Form (see **Annex G**), to: Planning.PDR2@gov.scot.

or

Development Management Team (PDR Review)
Planning and Architecture Division
Scottish Government
Area 2F South
Victoria Quay
Edinburgh EH6 6QQ

Handling your response

- 6.4. If you respond using the consultation hub, you will be directed to the “About You” page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and will treat it accordingly.
- 6.5. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise. To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps

- 6.6. Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be published at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email. An analysis report will also be made available.
- 6.7. Responses to the consultation will help inform the refinement of proposals and the drafting of regulations that would bring any PDR or UCO changes flowing from this consultation into force. We anticipate that such regulations would be laid in the Scottish Parliament later in Autumn 2022.

Scottish Government consultation process

- 6.8. Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.
- 6.9. You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.
- 6.10. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:
- indicate the need for policy development or review
 - inform the development of a particular policy
 - help decisions to be made between alternative policy proposals
 - be used to finalise legislation before it is implemented
- 6.11. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex A: Sustainability Appraisal Update

1.0 Introduction

- 1.1.1 The Scottish Government commissioned independent consultants LUC to undertake a Sustainability Appraisal (SA), incorporating the requirements of Strategic Environmental Assessment¹⁶ to inform its proposed programme for reviewing and extending permitted development rights (PDR) in Scotland. The resulting Sustainability Appraisal Report¹⁷ (the '2019 SA') was consulted on alongside a draft work programme from 5 November 2019 – 28 January 2020¹⁸.
- 1.1.2 The 2019 SA Report set out the potential for significant environmental, social and economic effects (both positive and negative) arising from options for changes to 16 development types. A Non-Technical Summary¹⁹ of the 2019 SA is available on the Scottish Government's web pages. The SA findings were used to inform the Scottish Government's iterative work programme for extending PDR. Further information on this and on the responses received to the 2019 consultation is set out in the draft Post Adoption Statement²⁰.

¹⁶ Under the [Environmental Assessment \(Scotland\) Act 2005 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2005/43/section/1)

¹⁷ [The Scottish Government's Programme for Extending Permitted Development Rights in Scotland: A Sustainability Appraisal \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2019/12/12/consultation-sustainability-appraisal/summary/1)

¹⁸ [Proposed programme for reviewing and extending permitted development rights \(PDR\) in Scotland - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.gov.scot/publications/consultations/2019/12/12/consultation-sustainability-appraisal/summary/1)

¹⁹ [Sustainability Appraisal summary.pdf \(consult.gov.scot\)](https://www.gov.scot/publications/consultations/2019/12/12/consultation-sustainability-appraisal/summary/1)

²⁰ [Permitted development rights - extension and review: strategic environmental assessment - draft post adoption statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/2019/12/12/consultation-sustainability-appraisal/summary/1)

2.0 Purpose of this Document

2.1.1 This Update to the 2019 SA is specifically relates to the proposals for phase 2 of the work programme. Building on the findings of the 2019 SA, this document sets out the findings of the further, iterative appraisal of the emerging phase 2 proposals for town centres²¹, and for electric vehicle (EV) charging infrastructure. It also assesses for the first time new proposals on PDR for port developments.

2.1.2 The Phase 2 proposals relate to:

- EV charging infrastructure;
- Changes of use and other development in centres;
- Port development.

2.2 How was this Update to the SA undertaken?

2.2.1 As a starting point, comments received on the 2019 SA on town centres and on EV charging infrastructure were reviewed to identify any issues requiring further consideration. The consultation draft Phase 2 proposals on town centres and EV charging infrastructure, published alongside this Update, were then considered for any potential significant environmental, social and economic effects beyond those already identified in the 2019 SA, and to identify any new proposals not previously assessed or requiring more detailed assessment.

2.2.2 We have also given consideration to wider policy and contextual changes, including the recently published Draft National Planning Framework (NPF4).²² The Draft NPF4 puts climate and nature, along with a wellbeing economy and Covid recovery at the heart of the planning system. The document also contains several draft policies intended to support the resilience and recovery of Scotland's centres. NPF4 was published in draft by the Scottish Government in November 2021 for a period of public consultation which ran until 31 March 2022.

2.2.3 The [New report on the future of public EV charging infrastructure | Transport Scotland](#) and [A Network fit for the Future: Draft Vision for Scotland's Public Electric Vehicle Charging Network | Transport Scotland](#) have also been published and discuss the need and objectives for public EV charging infrastructure. This is in the context of our climate change targets and the anticipated growth in electric vehicle ownership.

²¹Although previous assessments referred to "town centre" changes of use, this was not intended to denote that any changes would not apply in other types of centre – such as local or city centres. Indeed, any regulations stemming from the Phase 2 consultation would apply Scotland-wide. This is acknowledged in the consultation document, and hence the term "centres" is generally used to refer to all types of centre, including city, town and local centres. References to centre and town centre in this SA Update should be read in this context.

²² [Supporting documents - Scotland 2045 - fourth National Planning Framework - draft: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/scotland-2045-fourth-national-planning-framework-draft-consultation)

- 2.2.4 [A New Future for Scotland's Town Centres](#) was published in 2021 and presents the findings of the independent Town Centre Review Group tasked with reviewing the 2013 Town Centre Action Plan and to consider how we can make towns and town centres greener, healthier and more equitable and inclusive places. [At the Heart of Economic Transformation: Report of the City Centre Recovery Task Force](#) was published in March 2022; it identifies priorities to support cities' recovery from the pandemic.
- 2.2.5 Consideration was also given to the [Green Freeports in Scotland: bidding prospectus](#). Published in 2022, this sets out Scottish and UK governments' expectations for Green Freeports.
- 2.2.6 Where no new or updated appraisal findings are set out in this update, it is considered that the 2019 SA findings remain current.
- 2.3 What new proposals are set out in the Phase 2 consultation?**
- 2.3.1 The Phase 2 consultation includes proposals for changes to PDR for ports development which was not one of the 16 development types previously considered by the 2019 SA. Consideration has therefore been given to the potential for any likely significant effects arising, the findings of which are set out in Section 3.
- 2.4 What comments were received on the 2019 Sustainability Appraisal?**
- 2.4.1 An analysis of the responses received to the 2019 SA Report is available online²³, with thematic summaries in the draft Post Adoption Statement published October 2020 (and refreshed alongside this Update).
- 2.5 Which Reasonable Alternatives were considered?**
- 2.5.1 The 2005 Act requires the Environmental Report to identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives to a plan, programme, or strategy taking into account its objectives and geographical scope. The 2019 SA considered 16 broad categories of development for possible changes to PDR. Options for each development type were then developed through an iterative process in discussion with Scottish Environment Protection Agency (SEPA), NatureScot, and Historic Environment Scotland (HES) (the SEA consultation authorities), and a Virtual Review Group²⁴. With the exception of town centre changes of use, for each development type the options typically appraised were:

²³ [Reviewing and extending permitted development rights: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/reviewing-and-extending-permitted-development-rights-consultation-analysis)

²⁴ To inform the 2019 Sustainability Appraisal, the Scottish Government established a Virtual Review Group comprised of key stakeholders to engage with the appraisal at key stages. The VRG included contacts from industry; the SEA consultation authorities (SEPA, NatureScot and HES); planning authority representatives; representatives from the Scottish Government policy leads for the sectors involved; and, from bodies with interests in the built, historic and natural environments.

- no change to current PDR (where existing PDR);
- alteration of current PDR for a development type in relation to current restrictions in designated areas, and/or thresholds relevant to the scale/size of development; and
- creating new PDR for a development type in designated areas, non-designated areas, and/or introducing size/scale restrictions of receptors.

2.5.2 An alternative approach was applied to the 13 options identified for town centre changes of use. The 2019 SA instead focused on the sustainability effects of changes that would result from the addition or loss of 13 uses typically found in town centres, as a means of more clearly drawing out the likely significant impacts which could arise.

2.5.3 Any new or additional alternatives identified as part of this SA Update are considered further below and in Appendix A.

2.6 Mitigation

2.6.1 Mitigation proposed in the 2019 SA for the relevant development types was considered in the context of the draft Phase 2 proposals, with any additional mitigation identified where relevant. In line with the approach previously taken, potential mitigation includes:

- Defining conditions or restrictions on the extension of particular PDR, for example in terms of numbers, dimensions (e.g. height or area of development) and locations of development types likely to give rise to adverse effects.
- Redefining distance thresholds for particular PDR by establishing minimum distances beyond which effects from particular development types are unlikely to be significant.
- Retaining or requiring prior notification/prior approval.
- Promoting guidance and best practice to ensure that development which is implemented under PDR achieves high standards of design and implementation.

3.0 Updated Appraisal Findings

3.1 Electric Vehicle Charging Infrastructure

Current PDR for EV Charging

3.1.1 As described within the consultation document, two classes of PDR (classes 9E and 9F of the GPDO²⁵) address the installation, alteration or replacement of electric vehicle charging points in off-street parking areas. Class 9E relates to wall mounted EV charging points and Class 9F relates to EV charging point upstands. Additionally, local authorities have more general PDR under class 30 of the GPDO for relevant development required in connection with the operation of any public service administered by them. These PDR are not subject to the conditions and limitations that are specific to Classes 9E and 9F (e.g. they are not limited to off-street parking areas or restricted in particular locations such as National Parks), but are subject to general conditions and restrictions.

Proposed Changes to PDR for EV Charging

3.1.2 Phase 2 proposals on PDR for EV charging infrastructure include:

- Changes to PDR for wall mounted EV charging points on buildings in an area legally used for off-street parking (Class 9E) to:
 - Remove restriction of these PDR in certain designated areas specified in Class 9E(3)²⁶
 - Remove existing restrictions on adverts and signage on nameplates in order to simplify the legislation.
- Changes to PDR for off-street charging upstands in an area lawfully used for off-street parking (Class 9F) to:
 - Remove restriction of these PDR in certain designated areas specified in Class 9F(3)
 - Remove existing restrictions on nameplates
 - Extend the height restriction on EV charging upstands in Class 9F from 1.6 metres to 2.5 metres (except within the curtilage of a dwelling)
- Extend PDR to allow the development of solar canopies, battery storage and equipment housing associated with upstands in off-street parking areas. This would not apply in certain specified areas including sites of archaeological interest, national scenic areas, historic gardens

²⁵ [The Town and Country Planning \(General Permitted Development\) \(Scotland\) Amendment Order 2014 \(legislation.gov.uk\)](#)

²⁶ Class 9E(3) and 9F(3) sets out that Development is not permitted by this class in the case of land within (a) a site of archaeological interest; (b) a national scenic area; (c) a historic garden or designed landscape; (d) a historic battlefield; (e) a conservation area; (f) a National Park; or (g) a World Heritage Site.

or designed landscape, historic battlefields, conservation areas, National Parks, World Heritage Sites, and the curtilage of a dwelling.

- On-street/kerbside charging:
 - No specific proposals; the consultation seeks views on the issues to be considered if any PDR for on-street charging infrastructure were taken forward (what it would permit, who it would apply to, where it would apply and how it would relate to other controls/regulatory regimes).
- Local authority PDR
 - Noting the anticipated increase in private sector involvement in financing, delivering and maintaining EV charging apparatus, the Phase 2 consultation asks whether Class 30 PDR (see above) should be amended to reflect emerging funding and operating arrangements between authorities and third parties.
- Changes to existing petrol stations:
 - New PDR for change of use of petrol filling station to charging forecourt, and replacement of associated structures and facilities.

2019 SA Findings

3.1.3

The 2019 SA considered modification to the existing classes of PDR for EV charging, with Section 18 of the 2019 SA Report setting out the assessment findings in full. Key findings included:

- Potential for long term minor positive effects on climatic factors and air quality where an uptake of electric vehicles occurs through facilitating an increase in the number of charging points and faster/ more powerful charging points.
- Wider deployment of electric vehicles have potential to give rise to significant positive effects on the objective of supporting measures to reduce carbon emissions.
- Minor positive effects on the economy likely where PDR helps to support a transition to a low carbon economy by facilitating a take up of electric vehicles, as well as encouraging electric vehicle purchases, thereby supporting and enhancing opportunities for sustainable economic growth.
- Minor positive effects regarding health, and quality of life and living environment may arise where proposals support electric vehicle usage which results in less air and noise pollution.
- Potential significant negative effects on cultural heritage due to possible impacts on nationally significant assets, although effects are reversible;
- Potential long term significant positive effects on climate change and air quality from indirect support for reducing vehicle emissions.

3.1.4 The 2019 SA also found that extending PDR to allow upstands with electrical outlets and wall mounted electric vehicle charging points within 2 metres of a road or to increase the volume in all areas may result in potential significant negative effects due to the potential for the charging points to adversely impact the appearance, structure and setting of designated and undesignated assets. This is based on the worst case scenario of a significant number of charging points to be installed in any one location – fewer, more isolated charging points would result in a less significant effect.

3.1.5 The 2019 SA noted potentially significant negative impacts on cultural heritage would be avoided by limiting any increase in PDR to locations where PDR currently apply. Under this scenario, effects were likely to remain similar to those from existing PDR, by avoiding adverse effects on designated and undesignated heritage assets and their settings.

Comments Received on the 2019 SA Report

3.1.6 Information on the responses received to the 2019 SA Report is set out in the September 2020 Analysis of Responses²⁷ and in the draft Post Adoption Statement published alongside this Update. Specific points raised in relation to information in the SA concerning PDR for electric vehicle charging infrastructure are summarised below:

- A private sector respondent suggested that the baselines could do more to recognise scope for solar energy to contribute to reduction in emissions when deployed alongside EV charging infrastructure.
- A private sector respondent suggested that the SA over-states the potential negative impacts of EV charging infrastructure on cultural heritage, and does not provide sufficient justification for the proposed restriction on EV charging points within 2m of a road.
- A private sector respondent suggested that the SA overstates the negative environmental effects of EV charging points for non-listed buildings designated areas. It was also suggested that positive environmental impacts associated with EV charging infrastructure is not adequately captured by the SA.
- A public sector respondent suggested that mitigation proposals would not address effects on the setting of listed buildings.

Updated Appraisal Findings

3.1.7 The 2019 SA identified that options for changes to PDR that lead to increased uptake of EV vehicles are likely to give rise to significant positive effects on climate change and air quality through supporting the transition from fossil fuel powered transport to electric vehicles with reductions in associated emissions. Increased electric vehicle use was

²⁷ [Research Project: Analysis of responses to a consultation on reviewing and extending permitted development rights \(PDR\) \(www.gov.scot\)](https://www.gov.scot/research/projects/analysis-of-responses-to-a-consultation-on-reviewing-and-extending-permitted-development-rights-pdr)

also considered likely to have positive effects on human health and quality of life through reduction in noise and air pollution. We consider that these findings remain valid for the current phase 2 proposals.

- 3.1.8 The 2019 SA concluded that options for changes to existing PDR that relate to their size and location, including in off-street parking areas and within 2m of a road, have potential for significant negative effects on cultural heritage assets and their settings. It was however noted that any adverse effects would be avoided by limiting any increase in PDR to locations where PDR currently apply (i.e. as specified in Class 9F(3) and Class 9E(3)). While the Phase 2 proposals would include the removal of restriction in these areas, any changes would continue to be limited to existing off-street parking areas, therefore localising and minimising any adverse effects on cultural heritage. Views are however invited on this point through the consultation paper.

Canopies charging stations (solar) and battery storage

- 3.1.9 Views are invited on new Phase 2 proposals to extend PDR to allow the development of solar canopies and related battery storage and equipment housing for EV charging upstands in off-street parking areas. In addition to the Updated Appraisal findings on climate change, air quality and human health noted in para 3.1.7 above, there is potential for negative effects on the setting of heritage, landscape and cultural assets. These effects are considered to be localised due to the PDR applying only to existing off street car parking areas, excluding sites of archaeological interest, national scenic areas, historic gardens or designed landscapes, historic battlefields, conservation areas, National Parks, World Heritage Sites, and the curtilage of a dwelling. No new or additional effects have been identified in relation to biodiversity, water or soils. More detailed assessment is included in appendix A.

Reasonable alternatives

- 3.1.10 For completeness, appendix A appraises the following options:
- no change to current PDR;
 - Extending PDR for solar canopies and associated infrastructure in off-street parking areas including those within specified designated areas; and
 - Extending PDR for solar canopies and associated infrastructure in off-street parking areas outwith specified designated areas.

On-street/kerbside charging

- 3.1.11 In addition to the Updated Appraisal and 2019 SA findings on climate change, air quality and human health noted in para 3.1.7 above, extending PDR to include on-street EV charging infrastructure has potential to create negative effects on the setting of historic, cultural and landscape assets. Insensitively sited EV charging infrastructure can also be an obstruction to people with mobility impairments and people with

visual impairments. It is noted that other regimes, including the requirement to obtain consent from the relevant roads authority, would continue to apply. More detailed consideration is set out in Appendix A.

Reasonable alternatives

3.1.12 For completeness, appendix A appraises the following options in relation to on-street / kerbside charging:

- no change to current PDR;
- Extending PDR for on-street EV charging infrastructure in all areas; and
- Extending PDR for on-street EV charging infrastructure in all areas outwith specified designated areas;

Changes to Existing Petrol Stations

3.1.13 In addition to the Updated Appraisal and 2019 SA findings on climate change, air quality and human health noted in para 3.1.7 above, extending PDR to include change of use of petrol filling stations to charging forecourts, and replacement of associated structures and facilities is considered likely to lead to new / additional minor positive effects on material assets and soils where the proposals lead to removal of petrol tanks and reduced areas of contamination. The phase 2 proposals set out to ensure the area of development will not increase, and replacement buildings are no higher than existing buildings. The Updated Appraisal supports this aspect of the proposals in order to minimise impacts to the settings of heritage, landscape and cultural assets. No new or additional effects have therefore been identified in relation to biodiversity, landscape or cultural heritage.

Local Authority PDR

3.1.14 The Phase 2 consultation asks whether Class 30 PDR should be amended to make clear they apply to “electric vehicle charging points and any associated infrastructure”, and to reflect emerging funding and operating arrangements between authorities and third parties. No new or additional impacts have been identified in this respect.

Mitigation

3.1.15 It is recommended that consideration is given to excluding the curtilage of listed buildings from changes to Class 9F, as regards additional PDR for canopies, battery storage and equipment housing, in order to protect cultural heritage assets. The consultation document notes proposals would not apply in sites of archaeological interest, national scenic areas, historic gardens or designed landscapes, historic battlefields, conservation areas, National Parks, World Heritage Sites, and the curtilage of a dwelling which this assessment supports.

- 3.1.16 Finally, if PDR for on-street/kerbside EV charging infrastructure are taken forward it is recommended that consideration is given to excluding sites of archaeological interest, National Scenic Areas, historic gardens or designed landscapes, historic battlefields, conservation areas, National Parks, World Heritage Sites, and the curtilage of a listed building.

3.2 Changes of Use in Centres

- 3.2.1 The Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO) groups together various land uses with broadly similar planning impacts into separate “use classes”. Legislation²⁸ provides that a change of use within a use class does not constitute development for planning purposes, and so planning permission is not required.
- 3.2.2 Both PDR and the UCO have the effect of allowing certain works or changes of use to take place without the need to seek planning permission from the planning authority. The key difference is that the UCO takes specified changes of use out of the scope of planning control by providing that they do not involve development. PDR, on the other hand, grant permission for specified forms of development (including certain changes of use) and can therefore be tailored through conditions and limitations to the PDR.
- 3.2.3 The Phase 2 consultation seeks views on establishing a new class which brings together a variety of uses commonly found in (or associated with) centres but which currently sit in separate use classes. The effect of doing so would be that any changes of use within this broader, merged use class would not involve development and hence not require planning permission. This would potentially help centres become more agile and responsive, with the potential to promote diverse and mixed uses.
- 3.2.4 The 2019 SA focused on the sustainability effects of potential changes to PDR that would result in the addition or loss of thirteen typical “town centre” uses (as noted previously, these uses are not limited to town centres). These included:
- Shops
 - Financial, professional and other services
 - Food and drink (including pubs)
 - Business
 - General industrial
 - Storage or distribution
 - Hotels and hostels
 - Residential institutions
 - Residential – houses and flats
 - Non-residential institutions
 - Assembly and leisure (Including theatres)
 - Betting shops and pay day lending
 - Hot food takeaways

²⁸ See section 26(2)(f) of the Town and Country Planning (Scotland) Act 1997.

2019 SA findings

- 3.2.5 The 2019 SA identified significant positive economic effects in relation to changes that allow town centres to respond to evolving eating, shopping and working patterns. Significant positive cumulative effects were also noted in relation to climatic factors, where changes reduced the need to travel, and for population and human health through providing local services and facilities in an accessible location. The 2019 SA identified the potential for negative effects, including ‘bad neighbour’ effects and poor diet, where changes led to an increased number of take-away restaurants. Mixed significant effects were noted on cultural heritage reflecting the positive role of keeping historic buildings in use, but the potential impacts from physical changes to buildings.

Comments Received on the SA Report

- 3.2.6 Some planning authorities suggested that extending PDR for town centres may have negative impacts on residential amenity associated with noise, air quality, etc. It was also suggested that the SA should consider potential effects on human health as a result of changing vulnerability to flooding associated with change of use. Additionally a public sector respondent noted that mitigation measures have not been identified in relation to effects as a result of town centres change of use²⁹.

Proposed changes

- 3.2.7 The consultation paper sets out potential changes to both the Use Classes Order³⁰ and to PDR:
- Amendments to the Use Classes Order
 - Merge classes 1 (shops), 2 (financial, professional, service) and 3 (food and drink), potentially including certain uses in class 10 (non-residential institutions) and 11 (assembly and leisure).
 - PDR for provision of workspace
 - New PDR for change of use of certain buildings (e.g. those within Class 1-3) to Class 4 (business), subject to a maximum floorspace limit
 - PDR for moveable outdoor furniture
 - New PDR that would permit the placing of moveable furniture on a public road adjacent to food and drink premises (Class 3)
- 3.2.8 In addition, the consultation paper invites views on new PDR for provision of residential accommodation, though the Scottish Government is not

²⁹ [Reviewing and extending permitted development rights: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/development-rights/consultation-analysis/pages/11.aspx)

³⁰ The Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO) groups together various land uses with broadly similar planning impacts into separate “use classes”. Legislation provides that a change of use within a use class does not constitute development for planning purposes, and so planning permission is not required.

currently minded to progress such changes. Nevertheless, this option is considered here for completeness.

- New PDR for conversion of shops, offices and other “town centre” uses to residential use.

Updated Appraisal Findings

- 3.2.9 In addition to the 2019 SA findings in para 3.2.5 above, further consideration of the phase 2 proposals is set out below:

Merged Use Class

- 3.2.10 The creation of a new merged Use Class could result in the loss or gain of those uses included within the new class – including those which were assessed in the 2019 SA (see paragraph 3.2.4). Any change of use falling within such a class would not constitute development requiring planning permission. This includes changes to – but also changes from – those uses contained within a new class. Consequently it would not be possible to control or mitigate any associated impacts that may arise (e.g. noise, transport) through planning. However, other regimes would continue to apply, such as licensing, environmental health and building standards.
- 3.2.11 The extent to which the creation of such a Use Class would affect the quantity, type or rate of development coming forward is uncertain and will vary from place to place. Potential impacts of a merged class will be influenced by what uses are included in any merged class. The consultation document proposes an exclusion of ‘bad neighbour’ uses which may help to limit impacts such as noise. This Updated Appraisal supports this aspect of the proposals in order to minimise impacts on residential amenity. The consultation document also proposes to exclude class 4 from any merged Use Class due to potential loss of office space and potential to undermine town centre first policies, which may limit associated economic and social impacts were this to be included.

New PDR for provision of workspace

- 3.2.12 Proposals for a new PDR for conversion of certain buildings to Class 4 (business) may result in a gain of centre business. This is assessed within the 2019 SA, and we consider these findings remain valid with no new or additional effects identified.

New PDR for movable outdoor furniture

- 3.2.13 New PDR for outdoor furniture has potential to have negative effects on the setting of designated and undesignated cultural and historic assets if furniture is placed insensitively. Insensitively sited furniture can also be an obstruction to people with mobility impairments and people with visual impairments. It is noted that other regimes, including the requirement to obtain consent from the relevant roads authority, would continue to apply. Minor negative effects could result from increases in noise, late night disturbance and anti-social behaviour. Positive effects may arise where

street furniture contributes to the vibrancy of centres and increases sense of place, with potential knock-on effects for footfall and Centre viability, including additional trade for Centre businesses. More detailed consideration is set out in Appendix A.

Reasonable alternatives

3.2.14 For completeness, appendix A considers ‘do nothing’ / no change to PDR and ‘increased volume of outdoor furniture’.

- No change to PDR
- Change of PDR leading to increased volume of moveable outdoor furniture

PDR for provision of residential accommodation

3.2.15 A new PDR for conversion of shops, offices and other uses to residential use may result in a gain of flats and other residential accommodation in centres. This is assessed within the 2019 SA, and we consider these findings remain valid with no new or additional effects identified.

Mitigation

3.2.16 It is recommended that consideration is given to:

- Avoiding including ‘bad neighbour’ uses within any merged use class in order to minimise impacts on residential amenity.
- Requiring prior notification/prior approval within specified locations, including conservation areas, for movable outdoor furniture so that any potential impacts on amenity can be identified and avoided

3.3 Port Development

- 3.3.1 Although not forming part of the original PDR work programme, the Scottish Government separately committed to consider whether port operators' current PDR are fit-for-purpose, and whether amending them could support the Scottish and UK Government's objectives for Green Freeports. This commitment was contained in the draft prospectus³¹, which was prepared jointly with UK Government (UKG) and published in March 2021. On 25 March 2022 SG and UKG jointly published [A bidding prospectus for Scottish ports interested in being designated as Green Freeports](#).

Current PDR for Port Developments

- 3.3.2 In Scotland, port operator PDR are contained in Class 35 of Schedule 1 to the GPDO³².
- 3.3.3 The UK Government consulted on³³ and subsequently amended³⁴ the PDR that apply to port operators in England so that they are more closely aligned with those of airport operators. In Scotland, airport operator PDR are contained in Class 44 of Schedule 1 to the GPDO. These changes apply to all ports in England; not just those designated as Freeports.
- 3.3.4 In summary, the English amendments provide for:
- Development in connection with the provision of services and facilities to be carried out under PDR – unless it involves:
 - the erection of a building other than an operational building; or
 - the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.
 - Development to be carried out by the port operator's "agent of development"
 - The developer to "consult" with the planning authority prior to carrying out development (unless it is of a specified description).
- 3.3.5 Prior to these amendments, the PDR for both seaports and airports in England were effectively the same as those in Scotland.

³¹ [Green Ports Delivering Freeports for Scotland: Applicant Prospectus \(DRAFT\) - gov.scot \(www.gov.scot\)](#)

³² [The Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992 \(legislation.gov.uk\)](#).

³³ [Freeports consultation - GOV.UK \(www.gov.uk\)](#)

³⁴ [The Town and Country Planning \(General Permitted Development etc.\) \(England\) \(Amendment\) Order 2021 \(legislation.gov.uk\)](#)

Proposed Changes to PDR for Port Development

- 3.3.6 To ensure a level playing field between Scottish and English ports, it is proposed to take forward similar measure to those introduced by the UKG in England, as outlined above. Any new PDR would apply to all ports within the Class 35 definition and not just to prospective Green Freeports.

Appraisal Findings

- 3.3.7 The UK Government has suggested that the amendments would enable a wider range of development and operational activities to take place under PDR. However, as set out in the phase 2 proposals, it is unclear what these additional types of development are – in other words, what type of development could be carried out under the proposed new PDR that currently could not be undertaken under existing PDR. For this reason, no new or additional impacts have been identified on society or the environment. It is however acknowledged that, if this opportunity is not taken to align Scottish and English PDR for ports development, any potential benefits arising for example through increased certainty and clarity for developers may not be realised.

Appendix A: Sustainability Appraisal Matrices

PDR for charging upstands in off-street car parks

PDR for charging upstands in off-street car parks	No Change in PDR	Extend PDR to allow the development of solar canopies, battery storage and equipment housing associated with EV chargers in off-street parking areas: no restrictions in designated areas	Extend PDR to allow the development of solar canopies, battery storage and equipment housing associated with EV chargers in off-street parking areas outwith specified designated areas
Biodiversity, flora and fauna			
To avoid adverse effects on all habitats and species	No significant effects identified	No significant effects identified	No significant effects identified
To enhance biodiversity	No significant effects identified	No significant effects identified	No significant effects identified
Climatic factors			
To avoid increasing greenhouse gas emissions (GHG)	Minor positive effects expected due to facilitation of electric vehicle use through increasing the availability of charging points and fast/more powerful charging points, and avoiding increases in GHG.	Significant positive effects may arise where the changes in PDR facilitate an uptake in use of EV powered by renewable energy, and support the wider deployment of EV and charge points.	
To support actions which contribute to targets for reducing greenhouse gas emissions	Minor positive effects expected due to facilitation of electric vehicle use through increasing the availability of charging points and fast/more powerful charging points, and avoiding increases in GHG.	The proposed changes to PDR are likely to support actions which contribute to targets for reducing GHG emissions where an increase of EV charging utilises renewable energy. By supporting the wider deployment of electric vehicles these changes may have a significant positive effect.	
To support climate change adaptation	No significant effects identified	The use of renewable energy and battery storage may facilitate the creation of a more dispersed network of charging points, this network may be more resilient to climate change events which may disrupt power supply. By supporting the wider deployment of electric vehicles and use of renewable energy, these changes to PDR would make a significant positive effect.	
Air			
To avoid significant adverse effects on air	The existing PDR are likely to result in minor	The proposed changes to PDR would contribute to the increased availability of charging points.	

quality, particularly where air quality is a known issue through the designation of AQMA	positive effects on the avoidance of significant adverse effects on air quality where the PDR facilitates an increase in electric vehicles uptake. This may result in lower levels of air pollution from exhaust emissions, particularly at a local level, with associated benefits for human health and biodiversity. This could be of particular relevance where air quality issues currently exist such as AQMAs and to those most vulnerable to the impacts of atmospheric pollution.	supporting the use of electric vehicles, powered by renewable energy thereby reducing reliance on non-renewable energy and reducing associated air pollution. These changes would make a significant positive effect.	
To improve air quality	The existing PDR would have a positive effect on improving air quality as they encourage the uptake of electric vehicles which result in lower levels of air pollution compared with combustion engines. The effect is expected to be minor positive.	The proposed changes to PDR would contribute to the availability of charging points, supporting the use of electric vehicles and reducing air pollution. By supporting the wider deployment of electric vehicles and utilising renewable energy, these changes would make a significant positive effect.	
Water			
To improve the water environment and to avoid adverse effects on the quality and quantity of watercourses and waterbodies	No significant effects identified	No significant effects identified	No significant effects identified
To avoid and reduce flood risk	No significant effects identified	No significant effects identified	No significant effects identified
Soil			
To protect and avoid adverse effects on valuable soil resources, including carbon soils and best & most versatile agricultural land	No significant effects identified	No significant effects identified	No significant effects identified

To reduce vacant and derelict land/buildings and contaminated land and contaminated land	No significant effects identified	No significant effects identified	No significant effects identified
Cultural heritage			
To avoid adverse effects on designated and undesignated heritage assets and their settings	No significant effects identified	Extending PDR to allow development of canopies and battery storage in off-street car parks has potential to create negative effects on heritage assets and their settings.	Negative effects on heritage assets and their settings may be minimised by PDR applying only to off street car parking areas, and excluding parking areas located within sites of archaeological interest, historic gardens or designed landscapes, historic battlefields, conservation areas and World Heritage Sites.
To enhance, where appropriate, heritage assets and their settings and to improve the quality of the wider built environment	No significant effects identified	No significant effects identified	No significant effects identified.
Landscape and geodiversity			
To avoid adverse impacts on protected landscapes, wild land, geodiversity and all landscapes	No significant effects identified	Extending PDR to allow development of canopies and battery storage in off-street car parks has potential to create negative visual impacts.	Negative impacts on landscapes will be minimised by PDR applying only to off street car parking areas, and excluding parking areas within national scenic areas, historic gardens or designed landscapes, conservation areas, National Parks, World Heritage Sites, and the curtilage of a dwelling.
To enhance landscape quality	No significant effects identified	No significant effects identified	No significant effects identified
Material assets			
To avoid adversely impacting on material assets through the loss of resources such as soil or the	No significant effects identified	No significant effects identified	No significant effects identified

generation of waste through the loss of resources such as soil or the generation of waste			
To enhance material assets	No significant effects identified	No significant effects identified	No significant effects identified
Economy			
To support and enhance opportunities for sustainable economic growth	The existing PDR are likely to result in minor positive effects regarding supporting and enhancing opportunities for sustainable economic growth as they help to support a transition to a low carbon economy by facilitating a take up of electric vehicles, as well as facilitating an increase in electric vehicle purchases.	The proposed changes to PDR would contribute to the availability of charging points and facilitate an increase in electric vehicle use and purchases and support a transition to a low carbon economy. However, the positive economic effects resulting from a change in PDR would be similar to those provided by existing PDR, and the effects of the proposed changes would therefore remain minor positive.	
To support rural development	No significant effects identified	No significant effects identified	No significant effects identified
To support smarter resourcing of the planning system	No significant effects identified	No significant effects identified	No significant effects identified
Social, population and human health			
To avoid adverse effects on health and quality of life and reduce risks to health and quality of life	No significant effects identified	The proposed PDR are likely to result in minor positive effects on the avoidance of adverse effect on health and quality of life, where proposals lead to an increase uptake of electric vehicles with an associated reduction in noise and air pollution associated with fossil-fuel vehicles. This could be of particular relevance where air quality issues currently exist such as AQMAs and to those most vulnerable to the impacts of atmospheric pollution.	
To improve the health and living environment of people and communities including support for access, recreation and physical activity including support for access, recreation and physical activity	No significant effects identified	The proposed PDR are likely to result in minor positive effects on the health and living environment of people and communities, where proposals lead to an increase uptake of electric vehicles with an associated reduction in noise and air pollution associated with fossil-fuel vehicles. This could be of particular relevance where air quality issues currently exist such as AQMAs and to those most vulnerable to the impacts of atmospheric pollution.	
To support community cohesion and vitality	No significant effects identified	No significant effects identified	No significant effects identified

To support access to education and training	No significant effects identified	No significant effects identified	No significant effects identified
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PDR for on-street/kerbside charging

PDR for on-street /kerbside charging	No Change in PDR	Extend PDR to allow on-street charging infrastructure in all areas	Extend PDR to allow on-street charging infrastructure in all areas outwith specified designated areas
Biodiversity, flora and fauna			
To avoid adverse effects on all habitats and species	No significant effects identified	No significant effects identified	No significant effects identified
To enhance biodiversity	No significant effects identified	No significant effects identified	No significant effects identified
Climatic factors			
To avoid increasing greenhouse gas emissions (GHG)	No significant effects identified	Significant positive effects may arise where the changes in PDR facilitate an uptake in use of EV powered by renewable energy, and support the wider deployment of EV and charge points, particularly in areas where there are no off-street parking areas (covered by Classes 9E and 9F).	
To support actions which contribute to targets for reducing greenhouse gas emissions	No significant effects identified	A PDR supporting on-street charging infrastructure is likely to support actions which contribute to targets for reducing GHG emissions. By supporting the wider deployment of electric vehicles, through increasing the availability of charging points, these changes may have a significant positive effect.	
To support climate change adaptation	No significant effects identified	Facilitating the creation of a more dispersed network of charging points may increase the network resilience to climate change events. By supporting the wider deployment of electric vehicles and use of renewable energy, these changes to PDR would make a significant positive effect.	
Air			
To avoid significant adverse effects on air quality, particularly where air quality is a known issue through the designation of AQMA	No significant effects identified	The proposed changes to PDR may result in minor positive effects on the avoidance of significant adverse effects on air quality where the PDR facilitates an increase in electric vehicles uptake. This may result in lower levels of air pollution from exhaust emissions, particularly at a local level, with associated benefits for human health and biodiversity. This could be of particular relevance where air quality issues currently exist such as AQMA and to those most vulnerable to the impacts of atmospheric pollution.	
To improve air quality	No significant effects identified	The proposed changes may have a positive effect on improving air quality as they encourage the uptake of electric vehicles which result in lower levels of air pollution compared	

		with combustion engines. The effect is expected to be minor positive.	
Water			
To improve the water environment and to avoid adverse effects on the quality and quantity of watercourses and waterbodies	No significant effects identified	No significant effects identified	No significant effects identified
To avoid and reduce flood risk	No significant effects identified	No significant effects identified	No significant effects identified
Soil			
To protect and avoid adverse effects on valuable soil resources, including carbon soils and best & most versatile agricultural land	No significant effects identified	No significant effects identified	No significant effects identified
To reduce vacant and derelict land/buildings and contaminated land and contaminated land	No significant effects identified	No significant effects identified	No significant effects identified
Cultural heritage			
To avoid adverse effects on designated and undesignated heritage assets and their settings	No significant effects identified	Extending PDR to allow development of on-street chargers has potential to create negative effects on heritage assets and their settings.	Negative effects on heritage assets and their settings may be minimised by PDR excluding areas within sites of archaeological interest, historic gardens or designed landscapes, historic battlefields, conservation areas, World Heritage Sites and the curtilage of listed buildings.
To enhance, where appropriate, heritage assets and their settings and to improve the quality of the wider built environment	No significant effects identified	No significant effects identified	No significant effects identified.
Landscape and geodiversity			
To avoid adverse impacts on protected landscapes, wild land,	No significant effects identified	Extending PDR to allow development of on-street charging infrastructure has potential to create	Negative impacts on landscapes will be minimised by PDR excluding areas within national scenic areas.

geodiversity and all landscapes		negative visual impacts.	historic gardens or designed landscapes, conservation areas, National Parks, World Heritage Sites, and the curtilage of a dwelling.
To enhance landscape quality	No significant effects identified	No significant effects identified	No significant effects identified
Material assets			
To avoid adversely impacting on material assets through the loss of resources such as soil or the generation of waste through the loss of resources such as soil or the generation of waste	No significant effects identified	No significant effects identified	No significant effects identified
To enhance material assets	No significant effects identified	No significant effects identified	No significant effects identified
Economy			
To support and enhance opportunities for sustainable economic growth	No significant effects identified	The proposed changes to PDR are likely to result in minor positive effects regarding supporting and enhancing opportunities for sustainable economic growth as they help to support a transition to a low carbon economy by facilitating a take up of electric vehicles, as well as facilitating an increase in electric vehicle purchases.	
To support rural development	No significant effects identified	No significant effects identified	No significant effects identified
To support smarter resourcing of the planning system	No significant effects identified	No significant effects identified	No significant effects identified
Social, population and human health			
To avoid adverse effects on health and quality of life and reduce risks to health and quality of life and reduce risks to health and quality of life	No significant effects identified	<p>The proposed PDR are likely to result in minor positive effects on the avoidance of adverse effect on health and quality of life, where proposals lead to an increase uptake of electric vehicles with an associated reduction in noise and air pollution associated with fossil-fuel vehicles. This could be of particular relevance where air quality issues currently exist such as AQMAs and to those most vulnerable to the impacts of atmospheric pollution.</p> <p>Insensitively sited on-street EV charging infrastructure could create an obstruction, which could disproportionately affect people with mobility impairments and people with visual</p>	

		impairments. Other regimes would, however, continue to apply.	
To improve the health and living environment of people and communities including support for access, recreation and physical activity including support for access, recreation and physical activity	No significant effects identified	The proposed PDR are likely to result in minor positive effects on the health and living environment of people and communities, where proposals lead to an increase uptake of electric vehicles with an associated reduction in noise and air pollution associated with fossil-fuel vehicles. This could be of particular relevance where air quality issues currently exist such as AQMAs and to those most vulnerable to the impacts of atmospheric pollution.	
To support community cohesion and vitality	No significant effects identified	No significant effects identified	No significant effects identified
To support access to education and training	No significant effects identified	No significant effects identified	No significant effects identified

PDR for moveable outdoor furniture on public road adjacent to food and drink premises

Outdoor furniture on public road adjacent to food and drink premises	No Change in PDR	PDR for moveable furniture on public road adjacent to food and drink premises leading to increased volume of furniture
Biodiversity, flora and fauna		
To avoid adverse effects on all habitats and species	No significant effects identified	No significant effects identified
To enhance biodiversity	No significant effects identified	No significant effects identified
Climatic factors		
To avoid increasing greenhouse gas emissions	No significant effects identified	No significant effects identified
To support actions which contribute to targets for reducing greenhouse gas emissions	No significant effects identified	No significant effects identified
To support climate change adaptation	No significant effects identified	No significant effects identified
Air		
To avoid significant adverse effects on air quality, particularly where air quality is a known issue through the designation of AQMA	No significant effects identified	No significant effects identified
To improve air quality	No significant effects identified	No significant effects identified
Water		
To improve the water environment and to avoid adverse effects on the quality and quantity of watercourses and waterbodies	No significant effects identified	No significant effects identified
To avoid and reduce flood risk	No significant effects identified	No significant effects identified
Soil		
To protect and avoid adverse effects on valuable soil resources, including carbon soils and best & most versatile agricultural land	No significant effects identified	No significant effects identified
To reduce vacant and derelict land/buildings and contaminated land and contaminated land	No significant effects identified	No significant effects identified
Cultural heritage		
To avoid adverse effects on designated and undesignated	No significant effects identified	Potential negative effects if furniture is insensitively placed

heritage assets and their settings		and impacts on the setting of historic assets.
To enhance, where appropriate, heritage assets and their settings and to improve the quality of the wider built environment	No significant effects identified	No significant effects identified
Landscape and geodiversity		
To avoid adverse impacts on protected landscapes, wild land, geodiversity and all landscapes	No significant effects identified	Potential for positive effects where furniture improves townscapes, and increases sense of place
To enhance landscape quality	No significant effects identified	Potential for positive effects where furniture improves townscapes, and increases sense of place
Material assets		
To avoid adversely impacting on material assets through the loss of resources such as soil or the generation of waste through the loss of resources such as soil or the generation of waste	No significant effects identified	Positive effect as result of investment in premises
To enhance material assets	No significant effects identified	Positive effect as result of investment in premises
Economy		
To support and enhance opportunities for sustainable economic growth	No significant effects identified	Potential positive impact through knock-on effects for footfall and viability of centres, including additional trade for businesses.
To support rural development	No significant effects identified	No significant effects identified
To support smarter resourcing of the planning system	No significant effects identified	No significant effects identified
Social, population and human health		
To avoid adverse effects on health and quality of life and reduce risks to health and quality of life and reduce risks to health and quality of life	No significant effects identified	<p>Minor negative effects could result from increases in noise pollution, late night disturbance and anti-social behaviour. This can be avoided through consideration of hours of operation.</p> <p>Insensitively sited furniture could create an obstruction, which could disproportionately affect people with mobility impairments and people with visual impairments. However,</p>

		other regimes would continue to apply.
To improve the health and living environment of people and communities including support for access, recreation and physical activity including support for access, recreation and physical activity	No significant effects identified	Potential for positive effects where furniture contributes to the vibrancy of centres.
To support community cohesion and vitality	No significant effects identified	No significant effects identified
To support access to education and training	No significant effects identified	No significant effects identified

Annex B: Partial Business and Regulatory Impact Assessment

Purpose and intended effect

Permitted development rights (PDR) refer to those forms of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the local authority. Specifically, PDR are contained within the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”).

The Scottish Government is currently undertaking a review of PDR in Scotland. This review involves taking forward new and extended PDR for a wide range of development types. Through Phase 2 of the programme, we are considering how changes to PDR, as well as the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO)³⁵, could help to support:

- The rollout of electric vehicle (EV) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports

The measures proposed as part of Phase 2 would:

- Increase the scale of EV chargers that may be installed under PDR, broaden the locations where PDR apply and extend the scope of the PDR to include associated apparatus and equipment.
- Provide greater flexibility to change the use of certain buildings and place furniture outside premises.
- Align port operators’ PDR with those of airports.

The proposals have been informed by a sustainability appraisal incorporating Strategic Environmental Assessment (SEA) requirements, which was subject to public consultation in November 2019. The Phase 2 proposals are accompanied by an update to the sustainability appraisal and draft SEA Post Adoption Statement.

By removing the need to seek planning permission before carrying out specified forms of development, PDR and the UCO can help to provide greater certainty for applicants and save time and money associated with preparing a planning application. In doing so, this can help to promote wider Scottish Government objectives – including those related to EV charging, centres and ports.

Consultation

Within Government

The proposals have been informed by targeted engagement with Transport Scotland, Historic Environment Scotland (HES), National Parks, NatureScot and the Scottish Environment Protection Agency (SEPA). Discussions were also

³⁵ The UCO groups various uses of land/buildings into a series of separate classes and provides that a change between uses in the same class does not constitute development requiring planning permission.

held with representatives from the Scottish Futures Trust, Heads of Planning Scotland (HOPS), the Society of Chief Officers of Transport in Scotland (SCOTS), COSLA, the Law Society of Scotland, Scottish Property Federation, Scottish Grocers Federation and the UK Major Ports Group (UKMPG).

Public Consultation

In November 2019 we consulted on a proposed work programme for reviewing and extending PDR in Scotland along with a Sustainability Appraisal. This included early versions of proposals for extending PDR in relation to existing PDR for EV charging infrastructure and changes of use in centres. The ports proposals did not form part of the original PDR work programme; the Sustainability Appraisal has been updated to reflect this and other changes to the draft proposals since the original appraisal. The update accompanies the Phase 2 consultation.

The Phase 2 consultation will run for three months, during which the public will be able to comment on the proposals.

Business

Some initial engagement has been undertaken with businesses in advance of public consultation. Further engagement will be undertaken during the consultation period to help inform our final proposals for change.

Options

Option 1 - Do Nothing

No changes to current PDR or the UCO. Unless development is covered by PDR (or not development by virtue of the UCO), an application for planning permission would continue to be required.

Option 2 – Measures set out in Phase 2 consultation

Through the Phase 2 consultation, views are sought on the following potential measures:

- EV Charging Infrastructure
 - Removing the restriction in specified areas for upstands and wall mounted charging points in off-street parking areas.
 - Increasing the height limit for EV charging upstands in off street parking areas.
 - Extending PDR to cover solar canopies, equipment housing and battery storage related to EV charging upstands in off-street parking areas.
 - Introducing PDR for the conversion of existing petrol filling stations to EV charging hubs.
 - Introducing PDR for on-street EV charging infrastructure.
 - Updating local authority PDR to reflect emerging delivery models for EV charging infrastructure which might involve private sector.
- Centres
 - Merging various use classes, thereby providing greater flexibility to change the use of buildings without planning permission being required.

- Introducing PDR to allow the conversion of buildings in specified use to workspace.
- Introducing PDR for furniture to be placed outside specified premises serving food and drink.
- Port Development
 - Aligning port operators' PDR with those of airports to ensure a level playing field between English and Scottish ports, with respect to PDR.

Sectors and groups affected

The measures would, if taken forward, grant planning permission for specified forms of development (or provide that specified changes of use are not development for planning purposes). The effect is to allow relevant development to be carried out without a planning application needing to be submitted to and approved by the local authority. Key parties affected are:

- Developers, operators and landowners able to carry out development without preparing a planning application;
- Planning authorities no longer having to handle and determine planning applications for relevant development types; and
- Members of the public potentially affected by developments carried out under PDR (impacts, whether positive or negative, will depend on the nature of development).

Benefits

Granting planning permission through new or extended PDR (or providing that changes of use do not constitute development through UCO amendments) can help to provide greater certainty for developers. Such measures can avoid developers having to go to the time and expense of submitting a planning application. Financial savings (per development) will be associated with the lack of an application fee and the costs of preparing associated documentation, drawings and reports. Other than application fees (which are set by national legislation), these costs are very development- and context-specific and so cannot be robustly quantified. As of 1 April 2022³⁶, fees for the following types of development are:

- Change of use of building (other than to residential use): £600 per 100sqm of floorspace for first 4,000sqm; thereafter £300 per 100sqm up to maximum of £150,000
- Erection, alteration or replacement of plant or machinery: £500 per 0.1ha of site area for first 5ha, thereafter £250 per 0.1ha up to maximum of £150,000
- Construction of buildings and structures: £600 per 100sqm of floorspace for first 4,000sqm; thereafter £300 per 100sqm up to maximum of £150,000³⁷

³⁶ See the Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022- which do include limited powers for fees to be waived in certain cases.

³⁷ £300 if proposed building or structure does not exceed 50sqm; £600 per 0.1ha up to maximum of £150,000 where no buildings are proposed to be created

In addition to savings linked to lack of planning application fee and cost of preparing planning application documents, there would be savings associated with the time taken to obtain planning permission. Notwithstanding time preparing application materials, [planning performance statistics](#) indicate that in 2020-21 the average time taken to determine applications for local non-householder development was 12.4 weeks. Although we do not have the evidence to quantify time based savings, the planning application statistics indicate they could be substantial.

The overall extent of savings to business will ultimately depend on how many developments come forward under PDR (or UCO provisions) that would previously have been subject to a planning application. This is difficult to forecast, not least because planning application data held centrally is not broken down with sufficient 'granularity' to indicate how many applications there have previously been for the types of development for which PDR/UCO measures are being considered.

By removing more development proposals from the planning application process, the Phase 2 measures under consideration will also reduce administrative burdens on planning authorities – allowing them to focus resources elsewhere, including the determination of major planning applications.

The proposed measures are intended to, amongst other things:

- Encourage the rollout of EV charging infrastructure, in doing so helping to reduce vehicle emissions and tackle climate change.
- Promote the resilience, regeneration and recovery of city, town and local centres.
- Support operational development at ports.

To this extent, there will be benefits to the general public – particularly EV users and those who live in, work in or visit centres.

Costs

The proposed changes would result in savings for both applicants (who would no longer have to pay to prepare applications for planning permission) and planning authorities (who would no longer have to determine said applications). However, initially, savings may be partially offset by some indirect costs to business in ascertaining whether or not development proposals are covered by PDR, and in complying with planning enforcement were any work inadvertently carried out which subsequently transpires not to benefit from PDR. However, such costs are anticipated to be minimal and short-term and will naturally dissipate as parties become familiar with the changes.

The non-financial costs associated with projects carried out under PDR or UCO would depend on the specific nature and characteristics of the works (e.g. changes of use) that come forward. There could be localised impacts on amenity (e.g. visual appearance, noise, odours). The Phase 2 consultation seeks views on the extent of such impacts, and whether they could be

controlled through either non-planning regimes (e.g. environmental health, consenting under Roads legislation) or conditions/limitations placed on any new or amended PDR.

Scottish Firms Impact Test

We have had some initial engagement with firms/ organisations about our proposals; further discussions will take place during the consultation period.

Competition Assessment

We do not consider that the proposed Phase 2 measures would negatively impact on competition. It is considered that the measures would not limit the number or range of suppliers, the ability of suppliers to compete, suppliers' incentives to compete or the choices and information available to consumers.

Consumer Assessment

We do not consider that the proposed Phase 2 measures would negatively impact on consumers. It is considered that the measures would not affect the quality, availability or price of any goods or services in a market, affect the essential services market, such as energy or water, involve storage or increased use of consumer data, increase opportunities for unscrupulous suppliers to target consumers, impact the information available to consumers on either goods or services or their rights in relation to these, or affect routes for consumers to seek advice or raise complaints on consumer issues.

Test run of business forms

No new forms to be introduced.

Digital Impact Test

It is considered that the proposed measures would not be impacted by changes to processes brought about by digital transformation. Regulation of the technology used in the developments is not a matter for planning.

Legal Aid Impact Test

It is considered that the proposed changes will not give rise to increased use of legal processes or create new rights or responsibilities which would impact on the legal aid fund.

Enforcement, sanctions and monitoring

Planning authorities have a range of enforcement tools to deal with breaches of planning control. See [Planning Circular 10/2009](#) for further information.

Summary and recommendation

Summary costs and benefits table

Option	Total benefit per annum	Total cost per annum
Option 1 – Do Nothing	Current situation is maintained which is understood by applicants, authorities and third parties.	Applications would continue to be required for relevant development types, with associated costs and timescales.

			Not progressing the Phase 2 measures could potentially slow the rollout of EV charging infrastructure, the recovery of our centres and high streets and port development.
Option 2 – Measures set out in Phase 2 consultation	EV Charging Infrastructure	<p>New/extended PDR would reduce need for planning applications, leading to financial and time savings for applicants. However, we do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result.</p> <p>Changes under consideration would support roll-out of EV charging infrastructure, helping to reduce vehicle emissions and tackle climate change.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	<p>There could be localised amenity impacts, particularly as a result of visual effects of infrastructure located in designated areas (e.g. National Scenic Areas, conservation areas) where PDR are currently restricted. Article 4 directions could be used to address this.</p> <p>On-street chargers have potential to create obstructions which could adversely affect particular groups. Consultation seeks views on whether such impacts can be adequately controlled through separate consenting under Roads legislation and/or conditions attached to any new PDR.</p>
	Changes of Use in Centres	<p>New PDR and/or changes to the UCO would reduce need for planning applications, leading to financial and time savings for applicants. However, we do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result.</p> <p>The enhanced flexibility provided by the measures could help businesses to diversify and respond more rapidly to changing circumstances, community needs and customer demands. To that extent, proposals may help to support the resilience and recovery of centres, and promote the establishment of 20-minute neighbourhoods.</p>	<p>In the case of UCO changes under consideration, there could be localised amenity impacts where changes of use can take place outwith planning (by virtue of not being development). Consultation seeks views on whether non-planning regimes (e.g. environmental health) provide adequate control.</p> <p>Proposed UCO measures could potentially see a loss of certain uses (e.g. retail) in particular locations, leading to localised clustering rather than a diverse mix of uses.</p> <p>Furniture located on pavements outside food and drink premises have the potential to create obstructions which could adversely affect particular groups. Consultation seeks</p>

		<p>Thriving centres (and the ability of people to readily access local facilities and services) are associated with a range of social, economic and environmental benefits.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	views on whether such impacts can be adequately controlled through separate consenting under Roads legislation and/or conditions attached to any new PDR.
	Port Development	<p>We do not have data indicating how many planning applications the proposed measures would remove from the system or how many developments would be progressed as a result. Consultation seeks views on this point.</p> <p>Alignment of port and airport PDR would ensure a level playing field between Scottish and English ports with respect to ports, helping to attract and retain investment.</p> <p>Fewer applications would reduce burdens on planning authorities.</p>	Potential localised amenity impacts; these are expected to be limited as port and airport PDR are already very similar. Consultation seeks further views on this point.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact will be assessed with the support of businesses in Scotland.

Signed: Tom Arthur

Date: 21 April 2022

Minister's name: Tom Arthur MSP

Minister's title: Minister for Public Finance, Planning and Community Wealth

Scottish Government Contact point: Tom Winter, Planning and Architecture Division

Annex C: Draft Equality Impact Assessment Record

Title of policy/ practice/ strategy/ legislation etc.	Permitted Development Rights Review – Phase 2	
Minister	Minister for Public Finance, Planning and Community Wealth	
Lead official	Tom Winter	
Officials involved in the EQIA	Name	Team
	Lyndsey Murray Alan Cameron	Planning and Architecture Division
Directorate: Division: Team	Local Government: Planning and Architecture Division	
Is this new policy or revision to an existing policy?	Revision to Existing Policy	

Screening**Policy Aim**

Permitted development rights (PDR) refer to those forms of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the planning authority. Specifically, PDR are contained within the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”).

The Scottish Government is currently undertaking a review of PDR in Scotland. This review involves taking forward new and extended PDR for a wide range of development types. Through Phase 2 of the programme, we are considering how changes to PDR, as well as the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO)³⁸, could help to support:

- The rollout of electric vehicle (EV) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports.

The measures proposed as part of Phase 2 would:

- Increase the scale of EV chargers that may be installed under PDR, broaden the locations where PDR apply and extend the scope of the PDR to include associated apparatus and equipment.
- Provide greater flexibility to change the use of certain buildings and place furniture outside premises.

³⁸ The UCO groups various uses of land/buildings into a series of separate classes and provides that a change between uses in the same class does not constitute development requiring planning permission.

- Align port operators' PDR with those of airports.

The proposals have been informed by a sustainability appraisal incorporating Strategic Environmental Assessment (SEA) requirements, which was subject to public consultation in November 2019. The Phase 2 proposals are accompanied by an update to the sustainability appraisal and draft SEA Post Adoption Statement.

By removing the need to seek planning permission before carrying out specified development or works, PDR and the UCO can help to provide greater certainty for applicants and save time and money associated with preparing a planning application. In doing so, this can help to promote wider Scottish Government objectives – including those related to EV charging, centres and ports.

Who will it affect?

The measures would, if taken forward, grant planning permission for specified forms of development (or provide that specified changes of use are not development for planning purposes). The effect is to allow relevant development to be carried out without a planning application needing to be submitted to and approved by the local authority. Key parties affected are:

- Developers, operators and landowners able to carry out development without preparing planning application
- Planning authorities no longer having to handle and determine planning applications
- Members of the public affected by developments carried out under PDR (impacts, whether positive or negative, will depend on the nature of development)

As noted above, the proposed measures are intended to, amongst other things:

- Encourage the rollout of EV charging infrastructure, in doing so helping to reduce vehicle emissions and tackle climate change.
- Promote the resilience, regeneration and recovery of city, town and local centres.
- Support operational development at ports.

To this extent, there will be benefits to the general public – particularly EV users and those who live in, work in or visit centres. This includes people with protected characteristics.

What might prevent the desired outcomes being achieved?

The key factor which may prevent the desired outcomes being achieved is if the types of development provided for by PDR/UCO changes are not brought forward.

The Scottish Government can amend legislation such that specified development can be carried out without an application for planning permission being required. While that may help to incentivise such development, it does not – in and of itself – guarantee delivery. It is for businesses, operators,

developers and other relevant parties to determine whether to carry out development under any new provisions.

Stage 1: Framing

Results of framing exercise

Overall, the measures under consideration through Phase 2 of the PDR review are expected to have positive impacts on all groups, including those with protected characteristics.

Insofar as the measures support the roll-out (and increased accessibility) of EV charging infrastructure, there may be positive impacts on particular groups. The [Social and Equality Impact Assessment \(SEQIA\) undertaken alongside the National Transport Strategy 2](#) identified potential positive impacts on children and young people (who are more likely to be adversely affected by poor air quality and long term effects of climate change) as well as older people and disabled people (both of whom are more vulnerable to poor air quality). The [Cleaner Air for Scotland 2: equalities impact assessment](#) noted that differences in vulnerability to air pollution is a complex issue. The evidence is inconsistent, although research in older adults and studies that have used estimates of exposure based on place of residence suggest that the effects of air pollution are more pronounced in women. It also noted that epidemiological studies suggest a link between air pollution exposure and premature birth, with the strongest evidence for gaseous pollutants (O₃ and SO₂) and weaker evidence for particulates (PM_{2.5} and PM₁₀). The strongest evidence from epidemiological studies of pregnancy outcomes is that air pollution affects foetal growth and birth weight.

Insofar as the measures support the resilience and recovery of centres, there are likely to be positive impacts for those with protected characteristics. Thriving centres providing a range of accessible facilities and services are associated with multiple social, economic and environmental benefits. Indeed the recent report [A New Future for Scotland's Town Centres](#) by the Town Centre Review Group highlighted that successful centres which offer diverse and mixed uses can help to enhance a sense of community, place and advance equality by enabling all members of society to participate fully. The Phase 2 consultation document does recognise that although they are intended to promote greater flexibility and vibrancy the proposed UCO changes have the potential to see a loss of certain uses in particular locations, resulting in clustering of uses rather than diverse and mixed uses.

The initial framing exercise has indicated that specific proposals under consideration could potentially have negative impacts on people with certain protected characteristics – if they lead to uncontrolled provision of EV chargers and furniture located on pavements. A number of evidence sources, such as Transport Scotland's [Inclusive Design in Town Centres and Busy Street Areas](#), highlight that obstructions located on the street can affect the inclusiveness of the public realm in a way that disproportionately impacts disabled people. This includes wheelchair users, people with visual/hearing impairments as well as learning/non-visible disabilities. Obstructions and

street clutter may also have negative impacts on older people (age protected characteristic) and people using pushchairs/buggies (pregnancy and maternity protected characteristic).

However, the planning system is not the only regulatory process which has a bearing on the inclusiveness of the built environment. Notwithstanding any new/extended PDR, other controls would continue to apply to proposed development located on the street – such as consenting under Roads legislation and licensing. Land ownership (e.g. public ownership of non-private roads) can also influence outcomes positively. The Phase 2 consultation seeks views on whether these non-planning controls (and/or conditions attached to any new PDR) would be sufficient to ensure proper consideration of inclusive access if new PDR are taken forward for on-street chargers and furniture located outside certain premises serving food and drink.

Extent/Level of EQIA required

Overall, the proposals are considered to have positive impacts.

There is potential for certain measures under consideration to have negative impacts if taking them forward leads to uncontrolled provision of certain development/equipment/structures on or adjacent to pavements. We will seek views on this point – and on the EqIA more generally – through the Phase 2 consultation.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ³⁹	Evidence gathered and Strength/quality of evidence	Source
Age Disability Pregnancy and Maternity	Obstructions located within the public realm, streets and paths can adversely affect inclusive access for a number of different groups, including individuals with protected characteristics.	<p>Inclusive Design in Town Centres and Busy Street Areas: Transport Scotland Research Report (February 2021): Inclusive Design in Town Centres and Busy Street Areas Transport Scotland</p> <p>Going Further: Scotland's Accessible Travel Framework (2016) Going Further: Scotland's Accessible Travel Framework (transport.gov.scot)</p> <p>Scotland's Fourth National Planning Framework: Draft – Integrated Impact Assessment Society and Equalities Impact Assessment (November 2021): Supporting documents - Scotland 2045: fourth National Planning Framework - draft: society and equalities impact assessment - gov.scot (www.gov.scot)</p> <p>Weekly Poll – 20-minute Neighbourhoods (Week Beginning 9 November 2020) Have Your Say... (yoursayondisability.scot)</p>
Age Sex Disability	<p>Groups who are more vulnerable to transport emissions include children, women, older people and disabled people. These groups are likely to benefit from measures which improve air quality.</p> <p>Measures to mitigate impacts of climate change are likely to advance equality of opportunity for young people and children who are more likely to experience adverse impacts in their lifetime.</p> <p>Work to ensure that EV charging infrastructure is accessible by all users will provide equal opportunities to disabled people to purchase/use an EV.</p>	<p>National Transport Strategy 2 Delivery Plan – Social and Quality Impact Assessment (October 2021): NTS2 Delivery Plan - Social and Equality Impact Assessment (SEQIA) 2021-09-03 (transport.gov.scot)</p> <p>Cleaner Air for Scotland 2 – Equalities Impact Assessment (October 2020) Stage 2: Data and Evidence Gathering - Cleaner Air for Scotland 2: equalities impact assessment - gov.scot (www.gov.scot)</p>

³⁹ Refer to Definitions of Protected Characteristics document for information on the characteristics

<p>All</p>	<p>The provision of accessible shops, services and amenities has the potential to encourage active travel and promote social capital and inclusion – with social, economic and environmental benefits for all people, including those with protected characteristics.</p> <p>“We need to ensure there are good quality, affordable and accessible places and spaces where people spend time, gather and meet. It is essential to create, retain and maintain the environmental and social infrastructure that supports social interactions and participation in communities – the informal public places, spaces, and facilities where people spend time, gather and meet. Evidence shows this is most important in the areas where there is a perceived lack of these places, e.g. in areas of deprivation and for disabled people” (Social Capital in Scotland report)</p> <p>“The best of our town centres and our most successful towns offer a sustainable, local economy and society with diverse and mixed uses attracting and meeting the needs and desires of their local communities. They are centres that enhance a sense of community, place, identity and that advance equality by enabling all members of society to participate fully” (New Future for Scotland’s Town Centres)</p>	<p>Scotland’s Fourth National Planning Framework: Draft – Integrated Impact Assessment Society and Equalities Impact Assessment Supporting documents - Scotland 2045: fourth National Planning Framework - draft: society and equalities impact assessment - gov.scot (www.gov.scot)</p> <p>Social Capital in Scotland: report (February 2020) Supporting documents - Social capital in Scotland: report - gov.scot (www.gov.scot)</p> <p>A New Future for Scotland’s Town Centres: Town Centre Action Plan Review Group Report (February 2021) A New Future for Scotlands Town Centres (www.gov.scot)</p>
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Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination, harassment or victimisation.
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on people of all ages. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on young people and children, who are disproportionately affected by air pollution and the long term effects of climate change. Older people are also more vulnerable to air pollution, so are likely to benefit from measures that improve air quality.</p> <p>PDR relating to furniture and EV chargers located on or adjacent to pavements could potentially have negative impacts if they lead to uncontrolled provision of such developments. This is because obstructions and street clutter can adversely affect some older people disproportionately. However, inclusive access issues can be considered and controlled through mechanisms other than planning, which will continue to apply even if planning permission is granted via PDR. The Phase 2 consultation seeks views on this point and on any conditions and limitations on any new PDR.</p>

Promoting good relations among and between different age groups			x	Proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on relations between different age groups.
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Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination, harassment or victimisation.
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on disabled people. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on disabled people, who are more vulnerable to transport emissions.</p> <p>PDR relating to furniture and EV chargers located on or adjacent to pavements could potentially have negative impacts if they lead to uncontrolled provision of such developments. This is because obstructions and street clutter can adversely affect some disabled people disproportionately. However, inclusive access issues can be considered and controlled through mechanisms other than planning, which will continue to apply even if planning permission is granted via PDR. The Phase 2 consultation seeks views on this point and on any conditions and limitations on any new PDR.</p>
Promoting good relations among and between disabled and non-disabled people			x	Proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this

				would have an impact on relations between disabled and non-disabled people.
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Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on all people – including both men and women. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p>
Promoting good relations between men and women			x	Measures under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would affect relations between men and women.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.
Advancing equality of opportunity	x			To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on all people. The Phase 2 consultation document acknowledges

				<p>that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p> <p>PDR relating to furniture and EV chargers located on or adjacent to pavements could potentially have negative impacts if they lead to uncontrolled provision of such developments. This is because obstructions and street clutter can adversely affect some people disproportionately – including those with prams or pushchairs. However, inclusive access issues can be considered and controlled through mechanisms other than planning, which will continue to apply even if planning permission is granted via PDR. The Phase 2 consultation seeks views on this point and on any conditions and limitations on any new PDR.</p>
Promoting good relations			x	<p>The proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on good relations.</p>

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	<p>The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.</p>
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland’s centres, the measures should have a positive impact on all people. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some</p>

				<p>places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p>
Promoting good relations			x	<p>The proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on good relations.</p>

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	<p>The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.</p>
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on all people, regardless of their sexual orientation. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p>
Promoting good relations			x	<p>The proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on relations between people of different sexual orientation.</p>

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	<p>The proposed measures provide for certain types of development or</p>

				works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on all people, regardless of their race. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p>
Promoting good race relations			x	The proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on race relations.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.
Advancing equality of opportunity	x			<p>To the extent that they support the provision and/or retention of accessible facilities, services and amenities in Scotland's centres, the measures should have a positive impact on all people, regardless of their religion or belief. The Phase 2 consultation document acknowledges that the effects of the proposed UCO changes may vary and in some places could lead to loss and/or clustering of particular uses.</p> <p>Measures that promote the efficient rollout of EV charging infrastructure should have positive impact on all people, by helping to improve air quality and tackle climate change.</p>

Promoting good relations			x	The proposals under consideration are intended to promote certain types of development or works by removing the need to seek consent before carrying them out. It is not considered that this would have an impact on relations between people of different religions or beliefs.
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Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership⁴⁰	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			x	The proposed measures provide for certain types of development or works to be carried out without an application for planning permission. It is not considered that this would raise issues with regards to discrimination.

⁴⁰ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Positive impacts for all groups associated with measures that support the rollout of EV infrastructure and the resilience, regeneration and recovery of Scotland's centres. PDR related to furniture and EV charging infrastructure have the potential to affect inclusive access if they lead to uncontrolled provision: the consultation seeks views on whether and how such impacts can be properly mitigated.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁴¹ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The EqIA analysis has assisted with identification of potential effects – positive and negative – of emerging PDR and UCO proposals. We will use the Phase 2 consultation to seek views on the issues and potential mitigations identified. Consultation will enable respondents to highlight potential issues and impacts that may not have been identified to date. The further evidence gathered through consultation will inform the refinement and implementation of proposed measures.

Monitoring and Review

The Phase 2 will be subject to a 12 week period of public consultation, which will provide the opportunity for a range of stakeholders to comment on the proposed measures. The feedback received will help to inform the development, refinement and implementation of final proposals. These will be given effect through amendments to the GPDO and the UCO. Once the final regulations are prepared, consideration will be given to whether additional guidance, advice and information is required to help developers, planning authorities and other interested parties to understand the effect of the provisions.

As noted in the Post Adoption Statement that accompanies the Phase 2 consultation we will give further consideration to monitoring and set out our proposals following the consultation. This could involve various approaches such as liaison with planning authorities, developers and statutory bodies, as well as commissioning research. Subsequent Phases of the PDR programme will consider changes to PDR for other development types.

⁴¹ See EQIA – Setting the Scene for further information on the legislation.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes ☒ No ☐

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes ☒ No ☐

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes ☐ No ☐ Not applicable ☒

Declaration

I am satisfied with the equality impact assessment that has been undertaken for PDR Review – Phase 2 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Fiona Simpson

Position: Chief Planner, Scottish Government

Authorisation date: 21 April 2022

Annex D: Draft Children's Rights and Wellbeing Assessment

Brief Summary

Permitted development rights (PDR) refer to those forms of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the local authority. Specifically, PDR are contained within the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ("the GPDO").

The Scottish Government is currently undertaking a review of PDR in Scotland. This review involves taking forward new and extended PDR for a wide range of development types. Through Phase 2 of the programme, we are considering how changes to PDR, as well as the Town and Country planning (Use Classes) (Scotland) Order 1997 (UCO)⁴², could help to support:

- The rollout of electric vehicle (EV) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports

The measures proposed as part of Phase 2 would:

- Increase the scale of EV chargers that may be installed under PDR, broaden the locations where PDR apply and extend the scope of the PDR to include associated apparatus and equipment.
- Provide greater flexibility to change the use of certain buildings and place furniture outside premises.
- Align port operators' PDR with those of airports.

They would contribute to the following National Outcomes:

- We value, enjoy, protect and enhance our environment.
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- We live in communities that are inclusive, empowered, resilient and safe.

The proposals have been informed by a sustainability appraisal incorporating Strategic Environmental Assessment (SEA) requirements, which was subject to public consultation in November 2019. The Phase 2 proposals are accompanied by an update to the sustainability appraisal and draft SEA Post Adoption Statement.

By removing the need to seek planning permission before carrying out specified development or works, PDR and the UCO can help to provide greater certainty for applicants and save time and money associated with preparing a planning application. In doing so, this can help to promote wider Scottish Government objectives – including those related to EV charging, centres and ports.

⁴² The UCO groups various uses of land/buildings into a series of separate classes and provides that a change between uses in the same class does not constitute development requiring planning permission.

What aspects of the policy/measure will affect children and young people up to the age of 18?

The impact of the Phase 2 proposals will ultimately depend on the number and nature of developments that come forward as a result of any new provisions. PDR and the UCO enable specified development and works to be carried out without an application for planning permission but they do not guarantee delivery. Insofar as the measures do support the rollout of EV charging infrastructure and EV ownership, they should help to contribute to reduced vehicle emissions and improved air quality. These outcomes would positively affect children and young people. Similarly, insofar as the measures promote the resilience and recovery of Scotland's centres, children and young people would be positively affected. The potential changes to port operator PDR are not expected to affect children and young people.

What likely impact – direct or indirect – will the policy/measure have on children and young people?

The Phase 2 proposals are not expected to have direct impacts on children and young people. We anticipate that positive indirect impacts would stem from the proposed extension of PDR for EV charging infrastructure. This is on the basis that children and young people are disproportionately affected by air pollution and the long term effects of climate change. The Phase 2 measures that are intended to support the resilience and recovery of Scotland's centres also have the potential to indirectly benefit children and young people by helping to create spaces which are welcoming, safe and accessible.

Which groups of children and young people will be affected?

The positive indirect impacts associated with the Phase 2 measures are expected to benefit all groups. As noted in the EqIA accompanying the Phase 2 consultation, the proposed PDR for on-street EV chargers and furniture could potentially affect some disabled people (including disabled children and young people) negatively if they lead to uncontrolled provision of such developments. This is on the basis that obstructions and street clutter can hinder inclusive access. However, such issues can be considered and controlled through mechanisms other than planning, which will continue to apply even if planning permission is granted via PDR. The Phase 2 consultation seeks views on this point and on any conditions and limitations on any new PDR.

Is a Children's Rights and Wellbeing Impact Assessment required?

We do not consider that a CRWIA is required. Nevertheless we will use the Phase 2 consultation process to seek further views on the potential impacts that the proposals could have on children and young people.

Tom Winter Development Management Planning and Architecture Division	21 April 2022
Fiona Simpson Chief Planner Planning and Architecture Division	21 April 2022

Annex E: Draft Island Communities Impact Assessment

Overview

This consultation stage assessment relates to Phase 2 of the Scottish Government's Review of Permitted Development Rights. The background to the proposals are contained in the main body of the Phase 2 consultation paper.

The Islands (Scotland) Act 2018 (the 2018 Act)

Section 8 of the Islands (Scotland) Act 2018 states that Scottish Ministers must prepare an Island Communities Impact Assessment (ICIA) in relation to a policy, strategy, or service, which, in its opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the area in which the authority exercises its functions. These provisions came into force on 23 December 2020. In December 2020 the Scottish Government published guidance and a toolkit for the preparation of ICIA⁴³.

Policy objectives

Permitted development rights (PDR) refer to those forms of development which are granted planning permission through national legislation, meaning they can be carried out without a planning application having to be submitted to (and approved by) the local authority. Specifically, PDR are contained within the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ("the GPDO").

The Scottish Government is currently undertaking a review of PDR in Scotland. This review involves taking forward new and extended PDR for a wide range of development types. Through Phase 2 of the programme, we are considering how changes to PDR, as well as the Town and Country Planning (Use Classes) (Scotland) Order 1997 (UCO)⁴⁴, could help to support:

- The rollout of electric vehicle (EV) charging infrastructure.
- The resilience and recovery of city, town and local centres.
- Operational development at Scottish ports

The measures proposed as part of Phase 2 would:

- Increase the scale of EV chargers that may be installed under PDR, broaden the locations where PDR apply and extend the scope of the PDR to include associated apparatus and equipment.
- Provide greater flexibility to change the use of certain buildings and place furniture outside premises.
- Align port operators' PDR with those of airports.

Any changes to PDR and/or the UCO would be Scotland-wide.

⁴³ [Island Communities Impact Assessments: guidance and toolkit - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/island-communities-impact-assessments-guidance-and-toolkit/pages/1-introduction-to-icias.aspx)

⁴⁴ The UCO groups various uses of land/buildings into a series of separate classes and provides that a change between uses in the same class does not constitute development requiring planning permission.

Data Gathering and Consultation

The proposals have been informed by a sustainability appraisal incorporating Strategic Environmental Assessment (SEA) requirements, which was subject to public consultation in November 2019. The Phase 2 proposals are accompanied by an update to the sustainability appraisal and draft SEA Post Adoption Statement.

The Phase 2 consultation will run for three months, during which the public will be able to comment on the proposals – as well as the draft analysis in this consultation stage assessment. We will engage with Island authorities during the consultation period to gather further evidence about the impact of our proposals.

EV Charging Infrastructure

The [National Islands Plan Survey](#) (July 2021) found that 3% of islands use EVs. Related to this, the [ICIA accompanying the National Transport Strategy 2 Delivery Plan](#) (October 2021) highlights a lack of EV charging infrastructure on the islands. It notes that increased provision could:

- Facilitate greater use of EVs on the islands.
- Help to support tourism by enabling visitors to charge safely.
- Support resilience of freight transport coming to and from islands.
- Create job opportunities linked to installation and maintenance of chargers.

This would suggest that the Phase 2 measures related to provision of EV chargers would have a positive impact on island communities.

Changes of Use in Centres

Through Phase 2 we are considering the introduction of new PDR and/or changes to the UCO which, in summary, would provide greater flexibility to change the use of certain buildings and place furniture outside premises without a planning application having to be approved. Such measures are intended to support the resilience, recovery and regeneration of Scotland's centres. If taken forward they would apply across the whole of Scotland – including the Islands. To the extent that the measures support these outcomes, they should have a positive impact on island communities.

One of the specific measures under consideration is to merge a number of existing UCO use classes into a more general class: this was a recommendation of the Town Centre Review Group in their report [A New Future for Scotland's Town Centres](#) (February 2021). The effect of merging classes would therefore be to take additional changes of use out of the scope of planning control.

Such an amendment could help centres to become more flexible and responsive to changing circumstances; it would also reflect the extent to which centres (and the pressures they face) have evolved in recent years. However, the Phase 2 consultation and the accompanying Business and Regulatory Impact Assessment (BRIA) acknowledge that a deregulatory change of this nature could lead to a loss and/or concentrations of certain uses in particular locations. For example, the proposed merging of Classes 1, 2 and 3 would allow shops to change to cafes or restaurants without planning permission. Where communities are served by a single shop or general store, this has the potential to reduce the accessibility of local services. This could be a particular issue in rural areas, including Island

communities. The Phase 2 consultation therefore seeks additional views and evidence on this potential issue.

Port Development

The proposals we are seeking views on through the Phase 2 consultation would apply to all ports to which PDR under Class 35 of the GPDO are applicable – including island ports. The impacts and outcomes of the proposed measures are not expected to differ in the islands notwithstanding the particular importance of ports to island communities.

Conclusion

The assessment process requires that the Scottish Government determine whether in its opinion the policy, strategy or service is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

Overall, the proposed Phase 2 measures are expected to deliver benefits for Island communities. Of the proposals under consideration, those related to EV charging infrastructure and ports are anticipated to be of particular benefit.

We will use the Phase 2 consultation process to seek views on the draft analysis contained in this consultation stage assessment. Feedback and additional evidence gathered during the consultation period will inform the refinement and implementation of proposed measures. It will also inform the completion of the final ICIA, which will accompany any amendments to the GPDO and/or UCO that flow from the Phase 2 consultation.

Annex F: Fairer Scotland Duty Assessment

Policy title	Permitted Development Rights Review – Phase 2
Directorate: Division: Team:	Local Government & Communities Planning & Architecture Development Delivery
Policy lead responsible for taking the decision	Tom Winter

Rationale for decision
The changes to permitted development rights (PDR) and use classes order (UCO) proposed in this consultation are not considered to constitute a strategic decision for the purposes of the Fairer Scotland Duty. The proposals would alter the process by which specified forms of development are consented, in order to support wider Scottish Government policy objectives. The types of development for which new or extended PDR are being considered are either relatively small-scale (e.g. electric vehicle charge points), involve changes to the use of existing buildings or, in the case of ports, are limited to specific locations. This is consistent with the approach that was taken for Phase 1 of the PDR review .

I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:

Name and job title of Deputy Director (or equivalent)	Date authorisation given
Fiona Simpson, Chief Planner	21 April 2022



Review of Permitted Development Rights – Phase 2

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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 ☐ No



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W W W . g o v . s c o t

Circular 4/1998: The use of conditions in planning permissions

This Circular supersedes SDD No. 18/1986 (except Appendices A and B)
The Chief Executive Local Authorities

Copy to: The Director of Planning
Our ref: PGC/3/13
27 February 1998

Contents

Introduction

1. This Circular and the accompanying Annex sets out Government policy on the use of conditions in planning permissions. It updates and revises the guidance in SDD Circular 18/1986, which (except for Appendices A and B - see paragraph 11 below) is now cancelled, to take account of:

- new legislation, in particular the consolidation of the Planning Acts;
- Court decisions, which are referred to at relevant sections of the Annex;
- additional topics, such as Environmental Assessment and Nature Conservation; and
- good planning practice in the use of conditions.

General policy

2. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.

3. Planning conditions must not, however, be applied slavishly or unthinkingly; a clear and precise reason for a condition must be given. While the use of standard conditions can be important to the efficient operation of the development control process, such conditions should not be applied simply as a matter of routine. Conditions should be used to achieve a specific end, not to cover every eventuality.

4. It is essential that the operation of the planning system should command public confidence. The sensitive use of conditions can improve the effectiveness of development control and enhance that confidence. Conditions imposed in an unreasonable way, so that it proves impracticable or inexpedient to enforce them, will damage such confidence and should be avoided.

5. The Annex to the Circular sets out the policy in greater detail.

Development plans

6. Where appropriate, development plans should specify the policies which the authority propose to implement regularly by means of planning conditions. Where applicants for planning permission are aware of such policies, they are more likely to incorporate appropriate details in their submissions, thus reducing the risk of delay in determining the applications and possibly avoiding the need to impose a specific condition.

Appeals

7. Paragraph 19 of Annex A to SODD Circular 13/1997 states that, in the case of planning inquiries, the statement submitted by the planning authority should include a list of conditions that it would wish to see imposed on any approval which may be given. A similar practice, which some authorities already follow, is also appropriate to cases proceeding by way of written submissions. The Secretary of State expects Reporters will be vigilant in ensuring that conditions imposed meet the criteria in paragraph 2 above and the detailed policy set out in the Annex.

Breach of condition notices

8. Since July 1992, planning authorities have been able to ensure compliance with many planning conditions by serving a breach of condition notice. Guidance about this type of notice is given in SOEnD Circular 36/1992. If a valid breach of condition notice is contravened, the resulting offence is open to summary prosecution. But the prosecution's case must always be proved on the criminal standard of proof ("beyond reasonable doubt"). Consequently, if the breach of condition notice procedure is to operate effectively, planning conditions must be formulated precisely. In the event of prosecution, Courts will then have no doubt about exactly what is required in order to comply with the terms of a planning condition.

Specialist subjects

9. This Circular does not include specific advice on the use of planning conditions for specialist subjects such as minerals workings or for developments relating to waste management.

Manpower and financial considerations

10. This Circular brings up to date existing advice, and should therefore have no effect on local government manpower or expenditure.

Model conditions

11. The Secretary of State is of the view that detailed guidance on model conditions should be provided. Further work with local authority representatives in this area will be undertaken and a list of model conditions will be issued in due course. This Circular should be read with the forthcoming guidance on model conditions. Until the new list of model conditions is published, authorities should continue to refer to these in Appendices A and B of SDD Circular 18/1986.

Enquiries and further copies

12. Enquiries about the content of this Circular should be addressed to Mr Stephen Bruce (Telephone 01312447065). Further copies of the Circular and a list of current planning circulars may be obtained from The Scottish Office Development Department, Planning Division, 2-H, Victoria Quay, Edinburgh, EH6 6QQ (Telephone 0131 244 7066 or 7825).

Annex A: The use of conditions in planning permissions

Powers

Summary of powers

1. Conditions on planning permissions may be imposed only within the statutory powers available. Advice on these powers is given below. This advice is intended to be a guide, and it must be stressed that it is not definitive. An authoritative statement of the law can only be made by the Courts. The principal powers are in sections 37 and 41 of the Town and Country Planning (Scotland) Act 1997 (referred to below as "the Act"). Sections 58 and 59 of the Act require the imposition of time-limiting conditions on most grants of planning permission (see paragraphs 45 to 52 below). Powers to impose conditions are also conferred on the Secretary of State or Reporters by sections 46, 48 and 133 and Schedule 4 of the Act. Unless the permission otherwise provides, planning permission runs with the land and conditions imposed on the grant of planning permission will bind successors in title.

General power

2. Section 37(1) of the Act enables the planning authority to grant planning permission "either unconditionally or subject to such conditions as they think fit". The power to impose conditions is not, however, as wide as it appears, and must be interpreted in the light of Court decisions.

Powers for conditions on land outside application site and temporary permissions

3. Section 41(1) amplifies the general power in section 37(1) in two ways. It makes clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application. (The Courts have held that the question whether land is under the control of an applicant is a matter to be determined according to the

facts of the particular case. It is only necessary to have such control over the land as is required to enable the developer to comply with the condition.) The section also makes clear that the planning authority may grant planning permission for a specified period only.

Power to vary or remove the effect of conditions

4. Section 33 of the Act provides, among other things, for planning applications to be made in respect of development which has been carried out without planning permission and for applications for planning permission to authorise development which has been carried out without complying with some planning condition to which it was subject. Special consideration may need to be given to conditions imposed on planning permissions granted under section 33. For example, the standard time-limiting condition will not be appropriate where development has begun before planning permission has been granted.

5. Section 42 of the Act provides for applications for planning permission to develop land without complying with conditions previously imposed on a planning permission. The planning authority can grant such permission unconditionally or subject to different conditions, or they can refuse the application if they decide that the original condition(s) should continue. The original planning permission will continue to subsist whatever the outcome of the application under section 42. This section will not apply if the period within which the development could begin, as specified in the previous condition, has expired without the development having begun.*

Other considerations

Policy and other considerations

6. The limits of the enabling powers are not the only constraints on the use of conditions. Conditions should normally be consistent with national planning policies, as expressed in Government Circulars, National Planning Policy Guidelines (NPPGs) and other published material. They should also normally be consistent with the provisions of development plans and other policies of planning authorities. However, where a certain kind of condition is specifically endorsed by a development plan policy it is still necessary to consider whether it is justified in the particular circumstances of the proposed development. In general, conditions which duplicate the effect of other legislation should not be imposed (see paragraphs 19-22).

Practice

Role of pre-application discussions

7. Even before an application is made, informal discussions between the applicant and the planning authority can be very helpful. They can allow the applicant to formulate the details of a project so as to take full account of the requirements of the authority and assist the authority in making sure that those requirements are reasonable in the light of the development proposed. Discussion can also reduce the need for conditions, enable the authority to explore the possible terms of conditions which remain necessary and ensure that these are tailored to the circumstances of the case.

"Standard conditions"

8. Lists of standard or model conditions can be of great benefit. They can improve consistency of decisions, make effective use of staff resources and increase the speed of processing of planning applications. They may also, however, encourage the use of conditions as a matter of routine, without the careful assessment of the need for a condition which every applicant should be able to expect. Slavish or uncritical application of conditions is wholly inappropriate. Lists of standard conditions can usefully be made available locally, so that developers can take account of possible conditions at an early stage in drawing up their proposals. Such lists should contain a warning that they are not comprehensive and that conditions will always be devised or adapted where appropriate to suite the particular circumstances of a case.

Reasons

9. It is for the planning authority, in the first instance, to judge on the facts of the case whether a particular development proposal should be approved subject to planning conditions. By virtue of Article 22(1)(a) of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992, an authority deciding to grant permission subject to conditions must state the reasons for their decision. Where a planning authority, by virtue of Article 15 of the General Development Procedure Order, has consulted other bodies in respect of a planning application and is disposed to grant planning permission subject to a condition suggested to them by another body, the authority should ensure that the body has provided clear reasons for suggesting the imposition of the condition. Such conditions should only be imposed where they will meet clear land use planning objectives; as stated in paragraph 6 above conditions should not be used to duplicate controls available under other legislation. Reasons must be given for the imposition of every condition. It may be that more than one condition will be justified on the same basis, in which case it will be acceptable that such conditions be grouped together and justified by one reason. Reasons such as "to comply with the policies of the Council", "to secure the proper planning of the area" or "to maintain control over the development" are vague, and can suggest that the condition in question has no proper justification. The phrase "to protect amenity" can also be obscure and will often need amplification. If the reasons for the imposition of conditions are clearly explained, developers will be better able to understand the need for them and to comply with them in spirit as well as in letter. The likelihood of proper and acceptable conditions being challenged on appeal, so that development proposals are held up, will also be diminished.

Notes for information

10. Sometimes planning authorities will wish to give guidance to an applicant for outline planning permission as to the kind of details of reserved matters which they would find acceptable. A planning authority may also wish to draw the attention of an applicant to other statutory consents (eg listed building or road construction consent) which must be obtained before development can commence. This should not be done by imposing a condition: instead a note may be appended to the planning permission. A note may also be desirable to draw the attention of the applicant to his

or her right to make an application to vary or remove a condition under section 42 of the Act, or indeed for other purposes.

Planning agreements

11. Problems posed by a development proposal may be solved either by imposing a condition on the planning permission or by concluding a planning agreement under section 75 of the Act or under other powers. The Secretary of State's policy on planning agreements is set out in SODD Circular 12/1996. This makes it clear that the planning authority should normally seek to regulate a development by a condition rather than through an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part III of the Act if they are subsequently seen as being inappropriate or too onerous. Planning authorities should note that if a certain restriction is contrary to the advice contained in this Circular it is likely to be objectionable regardless of whether it is suggested that it should be implemented by a condition or an agreement. It is ultra vires to impose a condition in a planning permission requiring an applicant to enter into an agreement. Nor should conditions imposed on a grant of planning permission be duplicated in a planning agreement.

Tests

Six tests for conditions

12. On a number of occasions the Courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the Courts' criteria for validity, conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants. As a matter of policy, conditions should only be imposed where they are:

- necessary,
- relevant to planning,
- relevant to the development to be permitted,
- enforceable,
- precise, and
- reasonable in all other respects.

Test: need for a condition

13. In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification. Planning authorities should also avoid imposing conditions through anxiety to guard against every possible contingency, however remote. The argument that a condition will do no harm is no justification for its imposition; as a matter of policy a condition ought not to be imposed unless there is a definite need for it. The same principles, of course, must be applied in dealing with applications for the removal of a condition under section 33 or 42 of the Act; a condition should not be retained unless there are sound and clear-cut reasons for doing so.

14. In some cases a condition will clearly be unnecessary, such as where it would repeat provisions in another condition imposed on the same permission. In other cases the lack of need may be less obvious and it may help to ask whether it would be considered expedient to enforce against a breach- if not, then the condition may well be unnecessary.

15. Conditions should be tailored to tackle specific problems, rather than impose unjustified controls. In so far as a condition is wider in its scope than is necessary to achieve the desired objective, it will fail the test of need. For example, where an extension to a dwelling house in a particular direction would be unacceptable, a condition on the permission for its erection should specify that, and not simply remove all rights to extend the building. Permissions should not, however, be overloaded with conditions. It might be appropriate, for example, to impose on a permission in a conservation or other sensitive area a requirement that all external details and materials should be in complete accordance with the approved plans and specifications, rather than recite a long list of architectural details one by one.

Completion of development

16. Conditions requiring development to be carried out in its entirety, or in complete accordance with the approved plans, often fail the test of need by requiring more than is needed to deal with the problem they are designed to solve. If what is really wanted is simply to ensure that some particular feature or features of the development are actually provided or are finished in a certain way, specific conditions to this end are far preferable to a general requirement.

17. The absence of a specific condition does not prevent enforcement action being taken against development which differs materially from the approved design. However, it may well be easier for planning authorities to enforce compliance with a condition that has been breached, than to enforce on the basis of a material variation from the approved plans or description of development. Where an application includes information, for example on likely hours of working, which significantly influence the planning decision, it may be appropriate to include a specific condition to ensure compliance with the restrictions.

Test: relevance to planning

18. A condition which has no relevance to planning is ultra vires. A condition that the first occupants of dwellings must be drawn from the local authority's housing waiting list, for example, would be improper because it was meant to meet the ends of the local authority as housing authority and was not imposed for planning reasons. Although a condition can quite properly require the provision of open space to serve the approved development (as part of a housing estate, for example) it would be ultra vires if it required the open space to be dedicated to the public. Other conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) where there was no planning justification for such a constraint would similarly be ultra vires.

Other planning controls

19. Some matters are the subject of specific control elsewhere in planning legislation, for example advertisement control, listed building consent or tree preservation. If these controls are relevant to the development the planning authority should normally rely on them and not impose conditions on a grant of planning permission to achieve the purposes of a separate system of control (but on Trees note paragraphs 77 and 78 below).

Non-planning controls

20. Other matters are subject to control under separate legislation, yet are also of concern to the planning system. A condition which duplicates the effect of other controls will normally be unnecessary and one whose requirements conflict with those of other controls will be ultra vires because it is unreasonable. For example, a planning condition would not normally be appropriate to control the level of emissions from a proposed development where they are subject to pollution control legislation. However, such a condition may be needed to address the impact of the emissions to the extent that they might have land-use implications and/or are not controlled by the appropriate pollution control authority. (For further advice on this subject, see Planning Advice Note 51 Planning and Environmental Protection.) A condition cannot be justified on the grounds that the planning authority is not the body responsible for exercising a concurrent control and, therefore, cannot ensure it will be exercised properly. Nor can a condition be justified on the grounds that a concurrent control is not permanent but is subject to expiry and renewal (as, for example, with certain licences). Even where a condition does not actually duplicate or conflict with another control, differences in requirements can cause confusion and it will be desirable as far as possible to avoid solving problems by the use of conditions instead of, or as well as, by another more specific control.

21. Where other controls are also available, a condition may, however, be needed when the considerations material to the exercise of the two systems of control are substantially different, since it might be unwise in these circumstances to rely on the alternative control being exercised in the manner or to the degree needed to secure planning objectives. Conditions may also be needed to deal with circumstances for which a concurrent control is unavailable. A further case where conditions may be justified will be where they can prevent development being carried out in a manner which would be likely to give rise to onerous requirements under other powers at a later stage (eg to ensure adequate arrangements for the disposal of sewage and thus avoid subsequent intervention under the Sewerage (Scotland) Act 1968).

22. As a matter of policy, conditions should not be imposed in order to avoid compensation payments under other legislation (although such a condition would not be ultra vires if it could be justified on planning grounds). Although conditions which have the effect of restricting for planning purposes the activities in respect of which planning permission is granted may reasonably be imposed without any liability for compensation arising under planning legislation, great care should be taken with conditions which would have the effect of removing future liability for compensation which might arise under other legislation. For example, a condition requiring sound-proofing measures may be appropriate to a permission for residential development

near a major road where noise levels are high. But it will be inappropriate to impose such a condition with the aim of removing the roads authority's liability to install soundproofing when proposals for major road improvement are implemented. A condition of this sort is not relevant to the existing planning circumstances, but looks to future circumstances in respect of which other legislation provides compensation for those affected.

Test: relevance to the development to be permitted

23. Unless a condition fairly and reasonably relates to the development to be permitted, it will be ultra vires.

24. It is not, therefore, sufficient that a condition is related to planning objectives: it must also be justified by the nature of the development permitted or its effect on the surroundings. For example, if planning permission is being granted for the alteration of a factory building, it would be wrong to impose conditions requiring additional parking facilities to be provided for an existing factory simply to meet a need that already exists. It would similarly be wrong to require the improvement of the appearance or layout of an adjoining site simply because it is untidy or congested. Despite the desirability of these objectives in planning terms, the need for the action would not be created by the new development. On the other hand, it is proper for conditions to secure satisfactory access or parking facilities, for example, which are genuinely required by the users of a proposed development. Conditions can also be proper where the need for them arises out of the effects of the development rather than its own features; for example, where a permission will result in intensification of industrial use of a site, a condition may be necessary requiring additional sound-insulation in the existing factory buildings. It may even be justifiable to require by condition that an existing building be demolished- perhaps where to have both would result in the site being over-intensively developed.

Test: ability to enforce

25. A condition should not be imposed if it cannot be enforced. It is often useful to consider what means are available to secure compliance with a proposed condition. There are two provisions which authorities may use to enforce conditions; an enforcement notice under section 127 of the Act or a breach of condition notice under section 145. Precision in the wording of conditions is crucial when it comes to enforcement.

Practicality of enforcement

26. Sometimes a condition will be unenforceable because it is in practice impossible to detect an infringement. More commonly it will merely be difficult to prove a breach of its requirements. For example, a condition imposed for traffic reasons restricting the number of persons resident at any one time in a block of flats would be impracticable to monitor and pose severe difficulties in proving an infringement. However, where a condition is intended to prevent harm to the amenity of an area which is clearly likely to result from the development (for example, a condition requiring an amusement centre to close at a certain time in the evening), it will not usually be difficult to monitor compliance with the condition. Those affected by

contraventions of its requirements are likely to be able to provide clear evidence of any breaches.

Whether compliance is reasonable

27. A condition may raise doubt about whether the person carrying out the development to which it relates can reasonably be expected to comply with it. If not, subsequent enforcement action is likely to fail on the ground that what is required cannot reasonably be enforced. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (eg the construction of a means of access) on land within the application site but not, at the time of the grant of planning permission, under the control of the applicant. If the applicant failed to acquire an interest in that land and carried out the development without complying with the condition, the planning authority could enforce the condition only by taking action against the third party who owned the land to which the condition applied and who had gained no benefit from the development. Such difficulties can usually be avoided by framing the condition so as to require that the development authorised by the permission should not commence until the access has been constructed.

Enforcing conditions imposed on permission for operational development

28. An otherwise legally sound condition may prove unenforceable because it is imposed on a grant of planning permission for the carrying out of operations which have not been carried out in accordance with the approved plans. Authorities should take into account the Court of Appeal's judgement in the case of *Handoll and Others v Warner Goodman and Streat (A firm) and Others*, (1995) 25EG157, which held that the judgement of the Divisional Court in *KerrierDC v Secretary of State for the Environment and Brewer* (1980) 41P&CR284, had been wrongly decided. Both cases concerned a planning permission for the erection of a dwelling subject to an agricultural occupancy condition.**

Test: precision

29. The framing of conditions requires great care, not least to ensure that a condition is enforceable. A condition, for example, requiring only that "a landscaping scheme shall be submitted for the approval of the planning authority" is incomplete since, if the applicant were to submit the scheme and even obtain approval for it, but neglect to carry it out, it is unlikely that the planning authority could actually require the scheme to be implemented. In such a case, a requirement should be imposed that landscaping shall be carried out in accordance with a scheme to be approved in writing by the planning authority; and the wording of the condition must clearly require this. A condition of this kind also sets no requirement as to the time or the stage of development by which the landscaping must be done, which can similarly lead to enforcement difficulties. Conditions which require specific works to be carried out at a certain 'time' or stage should state clearly when this must be done.

Vague conditions

30. A condition which is not sufficiently precise for the applicant to be able to ascertain what he must do to comply with it is ultra vires and must not be imposed. Vague expressions which sometimes appear in conditions, for example "keep the

buildings in a tidy state" or "so as not to cause annoyance to nearby residents", give occupants little idea of what is expected of them. Furthermore, conditions should not be made subject to qualifications, such as "if called upon to do so" or "if the growth of traffic makes it desirable", because these do not provide any objective and certain criterion by which the applicant can ascertain what is required.

Discretionary or vetting conditions

31. Conditions which attempt to provide for an arbiter to interpret such expressions or qualifications do not avoid this difficulty. Conditions requiring that tidiness, for example, shall be "to the satisfaction of the planning authority" make the applicant no more certain of what is required. Conditions which are imprecise or unreasonable cannot be made acceptable by phrases such as "except with the prior approval of the planning authority" which purport to provide an informal procedure to waive or modify their effect. Similarly, conditions restricting the occupation of a building should not set up a vetting procedure for prospective occupiers. Conditions which raise these difficulties, however, are not to be confused with conditions which require the submission of a scheme or details for approval which will, when granted, provide the precise guidelines to be followed by the developer.

Clarity

32. Conditions should be not only precise but clear. Where the wording of a condition may be difficult to follow, it may be helpful to attach to the permission an illustrative plan (eg describing sight lines required at the entrance to an access road).

Test: reasonableness

33. A condition can be ultra vires on the grounds of unreasonableness, even though it may be precisely worded and apparently within the powers available.

Conditions invalid on grounds of unreasonableness

34. A condition may be unreasonable because it is unduly restrictive. Although a condition may in principle impose a continuing restriction on the use of land (provided that there are good planning reasons for that restriction), such a condition should not be imposed if the restriction effectively nullifies the benefit of the permission. For example, it would normally be reasonable to restrict the hours during which an industrial use may be carried on if the use of the premises outside these hours would affect the amenity of the neighbourhood. However, it would be unreasonable to do so to such an extent as to make it impossible for the occupier to run his business properly. If it appears that a permission could be given only subject to conditions that would be likely to be held unreasonable by the Courts, then planning permission should be refused altogether.

Avoidance of onerous requirements

35. Even where a condition would not be so unreasonably restrictive as to be ultra vires, it may still be so onerous that as a matter of policy it should be avoided. For example, a condition which would put a severe limitation on the freedom of an owner

to dispose of his property, or which would obviously make it difficult to finance the erection of the permitted building by borrowing on mortgage, should be avoided on these grounds. An unduly restrictive condition can never be made acceptable by offering the prospect of informal relaxation of its effect.

Control over land

36. Particular care needs to be taken over conditions which require works to be carried out on land in which the applicant has no interest at the time when planning permission is granted. If the land is included in the site in respect of which the application is made, such conditions can in principle be imposed, but the authority should have regard to the points discussed in paragraph 3 above. If the land is outside that site, a condition requiring the carrying out of works on the land cannot be imposed unless the authority are satisfied that the applicant has sufficient control over the land to enable those works to be carried out.

Conditions depending on others' actions

37. It is unreasonable to impose a condition worded in a positive form which developers would be unable to comply with themselves, or which they could comply with only with the consent or authorisation of a third party. Similarly, conditions which require the applicant to obtain an authorisation from another body, such as the Scottish Environment Protection Agency, should not be imposed.

38. Although it would be *ultra vires* to require works which the developer has no powers to carry out, or which would need the consent or authorisation of a third party, it may be possible to achieve a similar result by a condition worded in a negative form, prohibiting development until a specified action has been taken. Whereas previously it had been understood that the test of whether such a condition was reasonable, was strict; to the effect that there were at least reasonable prospects of the action in question being performed, the House of Lords (in the *British Railways Board v the Secretary of State for the Environment and Hounslow LBC* [1994] JPL32; [1993] 3 PLR 125) established that the mere fact that a desirable condition, worded in a negative form appears to have no reasonable prospects of fulfilment does not mean that planning permission need necessarily be refused as a matter of law. Thus, while an authority will continue to have regard to all relevant factors affecting a planning application and whether it should be granted with or without conditions, there is no longer a legal requirement to satisfy a reasonable prospects test in respect of any negative condition they may decide to impose. For example, if it could be shown that improvements to sewerage facilities for a new housing development were planned but there was no clear indication that they would be built within the time limits imposed by the permission, it might still be possible to grant consent subject to a condition that the houses should not be occupied until the relevant sewerage works were completed. It might also be reasonable to use a condition requiring that a development should not commence until a particular road had been stopped up or diverted, even if the timing remained uncertain. Planning authorities should therefore note this recent House of Lords ruling and its implications for a less restrictive view in the use of negative conditions.

Consent of applicant to unreasonable conditions

39. An unreasonable condition does not become reasonable because an applicant suggests it or consents to its terms. The condition will normally run with the land and may, therefore, still be operative long after the applicant has moved on. It must always be justified on its planning merits.

Regulation of development

Outline permissions

40. An applicant who proposes to carry out building or other operations may choose to apply either for full planning permission, or for outline permission with one or more of the following matters reserved by condition for the subsequent approval of the planning authority: the siting, design or the external appearance of the building, the means of access, or the landscaping of the site ("reserved matters"). An applicant cannot seek an outline planning permission for a change of use alone.

Details supplied in outline applications

41. An applicant can, however, choose to submit as part of an outline application details of any of these "reserved matters". Unless he has indicated that those details are submitted "for illustrative purposes only" (or has otherwise indicated that they are not formally part of the application), the planning authority must treat them as part of the development in respect of which the application is being made. The authority cannot reserve that matter by condition for subsequent approval, unless the applicant is willing to amend the application by withdrawing the details.

Conditions relating to outline permissions

42. Once outline planning permission has been granted, it cannot be withdrawn except by a revocation order under section 65 of the Act, and any subsequent approval of reserved matters does not constitute the granting of a further planning permission. Any conditions relating to anything other than the reserved matters should be imposed when outline permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those matters. So, where certain aspects of the development are crucial to the decision, planning authorities will wish to consider imposing relevant conditions when outline permission is granted. For example, it may be considered necessary to require a building to be constructed within a specified "footprint" or to retain important landscape features which would affect the setting of the building and its neighbours.

43. If the planning authority consider that, whatever the precise form the development is to take, access to the buildings should be from a particular road (or, alternatively, that there should be no means of access from a particular road), then a condition to this effect must be imposed on the outline permission. Approval of the details of the means of access to the permitted buildings can be refused on the grounds that there should not be access to the site from a particular road only if the need for such a restriction arises from the details of the development which have

been submitted for approval (eg from the density which is indicated by submitted details of the design and siting of the buildings). It is desirable that, wherever possible, notes should be appended to an outline permission to give the developer guidance as to what precise form of development will be acceptable to the planning authority.

Conditions reserving other matters

44. Authorities should seek to ensure, where possible, that conditions other than those relating to reserved matters, are self-contained and do not require further approvals to be obtained before development can begin. Where necessary, however, a planning authority may also, when granting a full or outline planning permission, impose a condition requiring that details of a specified aspect of the development which was not fully described in the application (eg the provision of car parking spaces) be submitted for approval before the development is begun. In the case of full permission such a condition can relate to details (such as landscaping) which might have been reserved matters had the application been made in outline. The applicant has the same right of appeal to the Secretary of State under section 47 of the Act if he cannot get the authority's approval, agreement or consent to matters reserved under such a condition as he has in respect of applications for approval of reserved matters.

Time-limits on the commencement of development

Statutory time-limits

45. The imposition of time-limits on the commencement of development is, by virtue of section 58 of the Act, not required for temporary permissions (see paragraphs 104-109), for permissions for any development carried out before the grant of planning permission, or for permissions granted by a development order, an enterprise zone or simplified planning zone scheme.

Time-limits on full permissions

46. Other grants of planning permission (apart from outline permissions) should, under section 58 of the Act, be made subject to a condition imposing a time-limit within which the development authorised must be started. The section specifies a period of five years from the date of the permission. Where planning permission is granted without a condition limiting the duration of the planning permission, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of 5 years beginning with the grant of permission.

Time-limits on outline permissions

47. Grants of outline planning permission must, under section 59 of the Act, be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. The periods specified for the submission of applications for approval of reserved matters are: the latest of three years from the

grant of outline permission; 6 months from the date of refusal of an earlier application; and 6 months from the date on which an appeal against such a refusal was dismissed. The periods specified for starting the development are either five years from the grant of permission or two years from the final approval of the last of the reserved matters, whichever is the longer.

Variation from standard time-limits

48. If the authority consider it appropriate on planning grounds, they may specify longer or shorter periods than those specified in the Act, and must give their reasons for so doing. In the absence of specific time-limiting conditions, permission is deemed to have been granted subject to conditions imposing the periods referred to in paragraphs 46 and 47. It may be particularly desirable to adopt a flexible approach to the fixing of time-limits where development is to be carried out in distinct parts or phases; section 59(6) of the Act provides that outline permissions may be granted subject to a series of time-limits, each relating to a separate part of the development. Such a condition must be imposed at the time outline planning permission is granted.

49. A condition requiring the developer to obtain **approval** of reserved matters within a stated period should not be used, since the timing of an approval is not within the developer's control. A condition, therefore, should set time-limits only on the **submission** of applications for approval of reserved matters.

Separate submission of different reserved matters

50. Applications for approval under an outline permission may be made either for all reserved matters at once, or for one at one time and others at another. Even after details relating to a particular reserved matter have been approved, one or more fresh applications may be made for approval of alternative details in relation to the same reserved matter. Once the time-limit for applications for approval of reserved matters has expired, however, no applications for such an approval can be made.

Effect of time-limit

51. After the expiry of the time-limit for commencement of development it would be ultra vires for development to be begun under that permission; a further application for planning permission must be made.

Renewal of permissions before expiry of time-limits

52. Developers who delay the start of development are likely to want their permission renewed, as the time-limit for implementation approaches. Under Article 5 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 applications for such renewals may be made simply by letter, referring to the existing planning permission, although the planning authority have power subsequently to require further information, if needed. As a general rule, such applications should be refused only where:

a. there has been some material change in planning circumstances since the original permission was granted (eg a change in some relevant planning policy for the area,

or in relevant road considerations or the issue by the Government of a new planning policy which is material to the renewal application);

- b. there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; or
- c. the application is premature because the permission still has a reasonable time to run.

Completion of development

Completion of whole development

53. A condition requiring that the whole of the development permitted be completed is likely to be difficult to enforce. If a development forming a single indivisible whole, such as a single dwelling house, is left half-finished, it may be possible to secure completion by a completion notice under section 61 of the Act. If, however, the reason for failure to complete is financial difficulties experienced by the developer, neither a completion notice nor the enforcement of conditions would be likely to succeed. In such circumstances, the only practical step open to the planning authority, if they wish to secure the completion of the development, would be to carry it out themselves following acquisition of the land. If a large development, such as an estate of houses is left half-complete, this may be due to market changes (for example, a shift in demand from four-bedroom to two-bedroom houses) and it would clearly not be desirable to compel the erection of houses of a type for which there was no demand. Conditions requiring the completion of the whole of a development should, therefore, not normally be imposed.

Completion of elements of a development

54. Conditions may be needed, however, to secure that a particular element in a scheme is provided by a particular stage or before the scheme is brought into use, or to secure the provision of an element of a kind a developer might otherwise be tempted to defer or omit. Thus it may be desirable to require that a new access to the site should be constructed before any other development is carried out; or, where an office scheme includes a car park, that the car park is completed before the offices are occupied; or, where the scheme includes both offices and housing, that the offices should not be occupied before the houses are complete. The approach adopted must, of course, be reasonable. Taking the last example, it could well be unacceptable to require that the houses should be completed before the offices are begun; this would be likely to be an unjustifiable interference with the way the development is carried out. Or, to take another example, it could well be unacceptable to demand that all the requirements of a landscape condition should be complied with before a building is occupied; this could involve the building lying empty for many months, since such a condition will often provide for a considerable maintenance period so that trees can become established.

Phasing

55. Conditions may also be imposed to ensure that development proceeds in a certain sequence where some circumstances of the proposal, for example the

manner of infrastructure provision, makes this necessary. A condition delaying development over a substantial period is a severe restriction on the benefit of the permission granted. If land is available for a particular purpose, its commencement should not be delayed by condition because the authority have adopted a system of rationing the release of land for development.

Traffic and transport

56. The Government is planning to publish a White Paper in 1998 setting out its new integrated transport policy. This will aim, for example, to offer genuine choice to the travelling public by promoting more integrated public transport systems and to address the problems of congestion and transport related pollution. New planning guidance and advice flowing from the new policy will be issued in due course and it is likely that this will have implications for the level of parking provision which it would be appropriate to prescribe in planning conditions. Subsequent paragraphs need to be read against this general background.

Parking, public transport, walking and cycling

57. Developments often generate extra traffic, usually in the form of haulage or delivery vehicles or cars of residents, visitors or employees. Unless this demand is minimal (as it might be, for example, in the case of some very small firms) and unlikely to cause obstruction, space may need to be provided for off-street parking. Any conditions specifying the number of parking spaces should be consistent with the development plan as well as transport policies for the area. They also need to be reasonable in relation to the size and nature of the development and to satisfy the tests referred to in paragraph 12.

58. Normally a parking site separate from the road will be needed. In this case, conditions should ensure, where necessary, that space is provided for the turning of vehicles so that they do not have to reverse on to the road. Where the authority decides that it is appropriate to require the provision of car parking spaces on other land under the control of the applicant, the development must be readily accessible from the car park.

59. In certain circumstances, developers may enter into a planning agreement with the planning authority to provide off-site parking or to contribute to other transport measures directly related to the development, for example to assist public transport or walking and cycling. The provisions of such agreements should reflect Government policy as set out in SODD Circular 12/1996.

Access

60. Where a service road is needed as part of a large development for which outline permission is to be granted, it may be necessary to impose a condition requiring all access to the main road to be by means of the service road. If such a condition is not imposed at outline stage it may not be possible to secure the objective at a later stage (see paragraph 42). Similarly, if it is desired that there should be no direct access on to a main road, or that access must be taken from a particular side road, a condition to that effect should be imposed on the outline permission, as without such

a condition these restrictions could not normally be introduced when details are being considered.

61. A condition may require the provision or improvement of a service road or means of access even if such works are not included in the application, provided that they can be undertaken on the site in respect of which the application is made, or on other land which is under the control of the applicant, and relates to the proposed development. The condition should be framed so as to require the laying out or improvement of the means of access on the relevant section of the service road on defined land before the relevant buildings are occupied.

62. In considering the imposition of conditions concerning "access", planning authorities should bear in mind the definition of "road" in section 277 of the Town and Country Planning (Scotland) Act 1997 which refers to the definition in section 151 of the Roads (Scotland) Act 1984:

"any way (other than a waterway) over which there is a public right of passage (by whatever means) and whether subject to a toll or not and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes and any reference to a road includes a part thereof."

Roads fall into 2 particular categories- "public roads" and "private roads", defined in section 151 of the Roads (Scotland) Act 1984. The former are those included in a list of public roads kept by the roads authority and such roads are managed and maintained by the authority. Private roads are those over which the public has a right of passage but whose maintenance is not the responsibility of a roads authority. Such roads are maintainable privately but they are not private in any other way. They are not included in the list of public roads but there is provision in the 1984 Act under which they can be added to the roads authority's list provided they are of adoptable standard. There is sometimes confusion as to what is a private road and that term is often associated in the public mind with, for example, driveways up to private houses. These are not "roads" in terms of the Roads (Scotland) Act as there is no public right of passage over them (anyone using them does so on the sufferance of the owner) and they are, in fact, private accesses. Planning authorities should ensure that prospective developers are fully aware of the significant difference between a private access and a private road. "Private road" marked on a plan indicates that the public will have a right of passage over the land comprising the road: the developer will be required to seek from the roads authority a separate written consent to build such a road and it must be constructed to the standard required by that authority.

Lorry routing

63. Planning conditions are not an appropriate means of controlling the right of passage over public roads. Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, such conditions are likely to be very difficult to enforce effectively. It may be possible to encourage drivers to follow preferred routes by posting site notices to that effect, or by requiring them to use a particular entrance to (or exit from) the site. But where it is judged essential to prevent traffic from using particular

routes, the appropriate mechanism for doing so is by means of an Order under section 1 of the Road Traffic Regulation Act 1984.

Cession of land

64. Conditions may not require the cession of land to other parties, such as the roads authority.

Development of contaminated sites

Contaminated land

65. Land formerly used for many purposes, including industry and waste disposal can be contaminated by substances that pose immediate or long-term hazards to the environment or to health, or which may damage buildings erected on such sites. Contaminants may also escape from the site to cause air and surface or groundwater pollution and pollution of nearby land. The emission of gas or leachate from a landfill site may be particularly hazardous. In these circumstances, appropriate conditions may be imposed in order to ensure that the development proposed for the site will not expose future users or occupiers of the site, buildings and services, or the wider environment to risks associated with the contaminants present. Planning authorities should, however, base any such conditions on a site-specific assessment of the environmental risks which might affect, or be affected by, the particular proposed development. Conditions should not duplicate the effect of other legislative controls. The contaminated land should be remediated to a standard which is suitable for the proposed use.

66. If it is known or strongly suspected that a site is contaminated to an extent which would adversely affect the proposed development or infringe statutory requirements, an investigation of the hazards by the developer and proposals for remedial action will normally be required before the application can be determined by the planning authority. Any subsequent planning permission may need to include planning conditions requiring certain remedial measures to be carried out.

67. In cases where there is only a suspicion that the site might be contaminated, or where the evidence suggests that there may be only slight contamination, planning permission may be granted subject to conditions that development will not be permitted to start until a site investigation and assessment have been carried out and that the development itself will incorporate any remedial measures shown to be necessary.

68. Conditions might also be imposed requiring the developer to draw to the attention of the planning authority the presence of significant unsuspected contamination encountered during redevelopment. The planning authority may then require the developer to take further remediation action under public health duties. Further guidance on contaminated land is contained in NPPG 10- Planning and Waste Management. PAN 33- Development of Contaminated Land and PAN 51- Planning and Environment Protection. A new regime for identifying and remediating contaminated land is being introduced through the provision of the Environmental Protection Act 1990, as amended by the Environment Act 1995. This uses a risk-

based approach in identifying contaminated land and applies the polluter pays and 'suitable for use' principles. The role of the planning system in addressing contamination will continue alongside the new regime.

Environmental assessment

69. For projects subject to environmental assessment, conditions attached to a grant of planning permission may incorporate monitoring and mitigation measures proposed in an environmental statement where such conditions meet the criteria summarised in paragraph 12. It may be appropriate to impose conditions on the grant of planning permission and in the light of the environmental assessment, to require a scheme of mitigation covering matters of planning concern to be submitted to and approved in writing by the planning authority before any development is undertaken. Again conditions should not duplicate the effect of other legislative controls. In particular, planning authorities should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control.

Noise

70. Noise can have a significant effect on the environment and on the quality of life enjoyed by individuals and communities. The planning system should ensure that, wherever practicable, noise-sensitive developments are separated from major sources of noise and that new development involving noisy activities should, if possible, be sited away from noise-sensitive land uses. Where it is not possible to achieve such a separation of land uses, planning authorities should consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning agreements. (See SDD Circular 16/1973.)

Nature conservation and landscape

71. Nature conservation and landscape quality can be important material considerations in determining many planning applications. Planning authorities should not, however, refuse permission if development can be permitted subject to conditions that will prevent damaging impacts on particular species, wildlife habitats or important physical features. Moreover, for some types of development, such as mineral workings, conditions can be used to provide, on completion of operations, a natural heritage asset. Conditions can also be used, for example, to require areas to be fenced or bunded off to protect them, to restrict operations or uses at or to particular times of the year, to safeguard particular views or to reinforce particular landscape features. The views of Scottish Natural Heritage (SNH) will be particularly important in assessing the impact of development on the natural heritage of an area and in framing appropriate conditions.

72. Planning authorities should bear in mind that a number of areas valued for their landscape quality or nature conservation interest are afforded statutory protection. National Scenic Areas provide the national designation for landscape. For habitats, as well as national designations (primarily Sites of Special Scientific Interest), European Community Directives on nature conservation, most notably through

Special Areas of Conservation under the Habitats Directive and Special Protection Areas under the Wild Birds Directive, are being implemented. A number of sites have also been designated under the Ramsar Convention on Wetlands of International Importance. Conditions affecting such areas will need to be consistent with the provisions applicable for their protection. Scottish Office Environment Department Circulars 13/1991 and 6/1995 are particularly important sources of information and guidance.

73. Where the primary concern relates to land management or access to natural heritage resources, planning authorities should consider whether mechanisms other than those provided under planning legislation might provide the best means of securing their objectives. Countryside Management Agreements under the Countryside (Scotland) Act 1967 as amended by the Natural Heritage (Scotland) Act 1991 provide a mechanism for securing appropriate management of natural heritage assets. Access or Public Path Creation Agreements under the 1967 Act can be used to secure appropriate access for enjoyment of the natural heritage.

Design and landscape

74. The appearance of a proposed development and its relationship to its surroundings are material considerations in planning decisions. While planning authorities should not attempt to use conditions simply to impose matters of taste, there will be circumstances where it is important to secure a high quality of design in a proposal if this is to make a positive contribution to a site and its surroundings and show consideration for its local context. This could involve, for example, specifying in conditions the use of particular design features such as materials or finishes. The appearance and treatment of the spaces between and around buildings is also of great importance. Similarly, planning authorities may wish to use conditions to ensure that important vistas are preserved or that landscape features are provided to improve the overall setting of a development.

75. Landscape design may raise special considerations. The treatment of open space can vary greatly and the objective should be to ensure that the intended design quality is achieved in practice. It is, therefore, especially important for the authority to give some advance indication of the essential characteristics of an acceptable landscape scheme- always bearing in mind that such requirements should not be unreasonable. It is of equal importance to ensure that the design proposals are reflected in the quality of works and materials in the final product. The design and implementation stages of landscape treatment may, therefore, be addressed more successfully by separate conditions, occurring as they do at different stages and under variable circumstances. The visual impact of a development will often need to be assessed as a whole and this may well involve considering details of landscape design together with other reserved matters.

Enforcement of landscaping requirements

76. To ensure that a landscape design scheme is prepared, conditions may require that no development should take place until the scheme is approved, so long as this requirement is reasonable. Enforcing compliance with landscape schemes can pose problems, since work on landscaping can rarely proceed until building operations are

nearing completion. Only on permissions for a change of use would it be acceptable to provide that the development permitted should not proceed until the landscaping had been substantially completed. Where permission is being granted for a substantial estate of houses, it might be appropriate to frame the relevant condition to allow for landscape works to be phased in accordance with a programme or timetable to be agreed between the developer and the planning authority and submitted for approval as part of the landscape design proposals. Alternatively, the erection of the last few houses might be prohibited until planting had been completed in accordance with the landscape scheme. In relation to a permission for an industrial or office building, it would be possible to impose a condition prohibiting or restricting occupation of the building until such works had been completed.

Trees

77. Section 159 of the Act places an express duty on the planning authority, when granting planning permission, to ensure whenever appropriate that adequate conditions are imposed to secure the preservation or planting of trees, and that any necessary tree preservation orders are made under section 160 of the Act. When granting outline planning permission, the authority may consider it appropriate to impose a condition requiring the submission of particular details relating to trees to be retained on the site, such as their location in relation to the proposed development and their general state of health and stability. When granting detailed planning permission, conditions may be used to secure the protection of trees to be retained, for example by requiring the erection of fencing around trees during the course of development or restricting works which are likely to adversely affect them. The long-term protection of trees, however, should be secured by tree preservation orders rather than by condition. Such orders may also be expedient for the temporary protection of existing trees until details of the reserved matters are submitted and it becomes clear whether there is a need to retain the trees.

78. The planting and establishment of new trees may need work over several months or years and the authority may wish to ensure that they obtain details of those responsible for the management and maintenance of certain planted areas during that period of time. Where appropriate, a condition may require not just initial planting, but also that trees shall be maintained over a specified period of years and that any which die or are removed within that time shall be replaced.

Sites of archaeological interest

Archaeological sites

79. Monuments scheduled as of national importance by the Secretary of State are protected by Part I of the Ancient Monuments and Archaeological Areas Act 1979. Where its provisions apply, their effect should not be duplicated by planning conditions (see paragraphs 19-21), although authorities granting planning permission in such circumstances are advised to draw the attention of the applicant to the relevant provisions of the 1979 Act.

80. Where, however, planning permission is being granted for development which might affect the setting of a scheduled monument or a non-scheduled monument or its setting, the planning authority may wish to impose conditions designed to protect

the monument or its setting; to secure the provision of archaeological excavation and recording prior to development commencing; or, if the expectation of significant archaeological deposits is low, to ensure arrangements are made for a watching brief before and during the construction period. Further advice on archaeology and planning conditions is given in NPPG 5 Archaeology and Planning and Planning Advice Note⁴² Archaeology.

Maintenance conditions

81. A condition may be imposed, where appropriate, requiring some feature of a development to be retained- car parking spaces off the road, for example, or an area of open space in a housing scheme. A condition requiring something to be maintained, in the sense of being kept in good repair or in a prescribed manner, should be imposed only when the planning authority are fully satisfied that the requirement is both relevant to the development which is being permitted, reasonable in its effects and sufficiently precise in its terms to be readily enforceable. Maintenance conditions should not normally be imposed when granting permission for the erection of buildings, or for works other than works of a continuing nature such as minerals extraction.

Conditions requiring a financial or other consideration for the grant of permission

82. As a general proposition no payment of money or other consideration can be required when granting a permission or any other kind of consent required by a statute, except where there is specific statutory authority. Conditions requiring, for instance, the cession of land for road improvements or for open space, or requiring the developer to contribute money towards the provision of facilities not directly related to the proposed development, should accordingly not be attached to planning permissions. There may, however, be certain circumstances whereby the general proposition should not apply. The appropriateness of conditions involving financial or other considerations is dependent on the particular circumstances of the development for which the planning authority intends to grant planning permission and whether, in particular, the proposed conditions satisfy the criteria in paragraph 12. Thus conditions, involving financial considerations, but which meet the tests in paragraph 12 need not necessarily be ultra vires. Planning authorities should also bear in mind the advice in SODD Circular 12/1996 on Planning Agreements.

Conditions altering the nature of the development

Modifying proposed development

83. If some feature of a proposed development, or the lack of it, is unacceptable in planning terms, the best course will often be for the applicant to be invited to modify the application. If the modification is substantial, of course, a fresh application will be needed. It may however, depending on the case, be quicker and easier for the planning authority to impose a condition modifying the development permitted in some way. The precise course of action will normally emerge during discussion with the applicant. It would thus be legitimate to require by condition that a factory

proposal, for example, should include necessary car parking facilities, but wrong to grant permission for a development consisting of houses and shops subject to a condition that houses be substituted for the shops. Whether a modification would amount to substantial difference will depend upon the circumstances of the case. A useful test will be whether it would so change the proposal that: (i) those who have shown an interest in it would wish to comment on the modification; and (ii) those who, although they had a right to object to the original application and chose not to do so, would be prejudiced if they were not now given an opportunity to comment. A condition modifying the development, however, cannot be imposed if it would make the development permitted substantially different from that comprised in the application.

Regulation after development

84. Conditions which will remain in force after the development has been carried out always need particular care. They can place onerous and permanent restrictions on what can be done with the premises affected and they should, therefore, not be imposed without scrupulous weighing of where the balance of advantage lies. The following paragraphs give more detailed guidance.

Restrictions on use or permitted development

85. Exceptionally, conditions may be imposed to restrict further development which would normally be permitted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, or to restrict changes of use which would not be regarded as development whether because the change is not a "material" change within the terms of section 26(1) of the Act, or by reason of section 26(2) and the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997. Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses. It should be noted, however, that a condition restricting changes of use will not restrict ancillary or incidental activities unless it so specifies. Similarly, a general condition which restricts the use of land does not remove permitted development rights for that use unless the condition specifically removes those rights as well.

Presumption against such restrictions

86. Both the General Permitted Development Order and the Use Classes Order, however, are designed to give or confirm a freedom from detailed control which will be acceptable in the great majority of cases. Accordingly, save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by the General Permitted Development Order or future changes of use which the Use Classes Order would otherwise allow. The Secretary of State would regard such conditions as unreasonable unless there were clear evidence that the uses excluded would have serious adverse effects on amenity or the environment, that there was no other forms of control and that the condition would serve a clear planning purpose.

87. To illustrate some exceptional circumstances, it may be possible to justify imposing a condition restricting permitted development rights allowed by Class 7 of the General Permitted Development Order so as to preserve an exceptionally

attractive open plan estate free of fences, or under Class 1 of the General Permitted Development Order so as to avoid over-development by extensions to dwelling houses in an area of housing at unusually high density. Similarly, changes of use may be restricted so as to prevent the use of large retail premises as a food or convenience goods supermarket, where such a use may generate an unacceptable level of additional traffic or have a damaging effect on the vitality of a nearby town centre. Conditions may also limit the storage of hazardous substances in a warehouse.

Specific conditions better than general ones

88. Because of the general presumption against such restrictions on permitted development or on changes of use which are not development, it will always be necessary to look carefully at the planning reasons for any restriction and to ensure that the condition imposed is no more onerous than can be justified (see paragraph 87 above). It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end. For example, where it is necessary to restrict the volume of noise emitted from an industrial site and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses. Scrupulous care in the giving of proper, adequate and intelligible reasons for imposing conditions (see paragraph 9) can help authorities to ensure that the conditions they impose are not more onerous than is necessary to achieve their objective.

Restrictions on use

89. It will be preferable if a condition designed to restrict changes of use can be drafted so as to prohibit a change to a particular unacceptable use or uses (provided the list does not become too long), rather than in terms which prevent any change of use at all. However, in certain cases a condition confining the use only to the use permitted may be necessary. In appropriate circumstances, it might be reasonable to impose a condition limiting the intensification of use of small office or industrial buildings where intensification beyond a certain point would generate traffic and/or parking problems. Conditions designed to prevent the primary use of an office building being changed to use as shops are unnecessary, as this would involve a material change of use amounting to development of land which would require planning permission.

Ancillary uses

90. Conditions are sometimes imposed restricting ancillary or incidental activities which would not normally be material changes of use involving development. Conditions of this kind can be burdensome to some technologically advanced industries. They may have a need for higher than normal levels of ancillary office, research or storage uses, or for short-term changes in uses or the balance of uses. Such conditions should, therefore, not normally be imposed on permissions for manufacturing or service industry, except where they are designed to preclude or regulate activities giving rise to hazard, noise or offensive emissions.

Conditions restricting the occupancy of buildings and land

Occupancy: general considerations

91. Since planning controls are concerned with the use of land rather than the identity of the user, the question of who is to occupy premises for which permission is to be granted will normally be irrelevant. Conditions restricting occupancy to a particular occupier or class of occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission.

Personal permissions

92. Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions relating, for example, to strong compassionate or other personal grounds, where the planning authority is minded to grant permission for the use of a building or land for some purpose which would not normally be allowed. In such a case the permission may be made subject to a condition that it shall enure only for the benefit of a named person- usually the applicant. A permission personal to a company is generally inappropriate. Conditions of this type will scarcely ever be justified in the case of a permission for the erection of a permanent building.

General undesirability of commercial and industrial occupancy conditions

93. Conditions are sometimes imposed to confine the occupation of commercial or industrial premises to local firms. Such conditions can act- undesirably- to protect local businesses against fair competition and may hinder the movement of industry in response to economic demand. If a service, or the employment it generates, is needed in an area, there is no planning reason why it should be provided by one firm rather than another. Commercial and industrial buildings in an area of open countryside will not become more acceptable because their occupancy is restricted, nor will the expansion of a local firm necessarily lead to less pressure for further development (eg housing) than the arrival of a firm from outside. The Secretary of State therefore regards such conditions as undesirable in principle.

Conditions governing size of unit occupied

94. Conditions requiring that a large commercial or industrial building should be occupied either only as a single unit or, alternatively, only in suites not exceeding a certain area or floorspace, represent a significant interference with property rights which is likely to inhibit or delay the productive use of the buildings affected. Such conditions should, therefore, normally be avoided.

Domestic occupancy conditions

95. Subject to the advice about affordable housing (paragraph 96), staff accommodation (paragraph 98-99), agricultural and forestry dwellings (paragraphs 100-102) and seasonal use (paragraphs 111-113), if the development of a site for housing is an acceptable use of the land, there will seldom be any good reason on

land use planning grounds to restrict the occupancy of those houses to a particular type of person (eg those already living or working in the area). To impose such a condition would be to draw an artificial and unwarranted distinction between new houses or new conversions and existing houses that are not subject to such restrictions on occupancy or sale. It may deter house-builders from providing homes for which there is a local demand and building societies from providing mortgage finance. It may also impose hardship on owners who subsequently need to sell. It involves too detailed and onerous an application of development control and too great an interference in the rights of individual ownership. Such conditions should, therefore, not be imposed save in the most exceptional cases where there are clear and specific circumstances that warrant allowing an individual house (or extension) on a site where development would not normally be permitted.

Affordable housing

96. The community's need for a mix of housing types- including affordable housing- is capable of being a material planning consideration. It follows that there may be circumstances in which it will be acceptable to use conditions to ensure that some of the housing built is occupied only by people falling within particular categories of need. Such conditions would normally only be necessary where a different planning decision might have been taken if the proposed development did not provide for affordable housing and should make clear the nature of the restriction by referring to criteria set out in the relevant development plan policy. Conditions should not normally be used to control matters such as tenure, price or ownership. Guidance on affordable housing is contained in NPPG 3: Land for Housing.

"Granny annexes"

97. Some extensions to dwellings are intended for use as "granny annexes". It is possible that a "granny annex" which provides independent living accommodation, could subsequently be let or sold off separately from the main dwelling. Where there are sound planning reasons why the creation of an additional dwelling would be unacceptable, it may be appropriate to impose a planning condition to the effect that the extension permitted shall be used solely as accommodation ancillary to the main dwelling house. The same is true for separate buildings (often conversions of outbuildings) intended for use as "granny annexes". In these cases it is even more likely that a separate unit of accommodation will be created.

Staff accommodation

98. The above considerations may equally apply to staff accommodation. Where an existing house is within the curtilage of another building and the two are in the same occupation, any proposal to occupy the two buildings separately is likely to amount to a material change of use, so that planning permission would be required for such a proposal even in the absence of a condition. Planning authorities should normally consider applications for such development sympathetically since, if the need for such a dwelling (for the accommodation of an employee, for example) disappears, there will generally be no justification for requiring the building to stand empty or to be demolished.

99. Conditions tying the occupation of dwellings to that of separate buildings (eg requiring a house to be occupied only by a person employed by a nearby garage) should be avoided. However, exceptionally, such conditions may be appropriate where there are sound planning reasons to justify them, eg where a dwelling has been allowed on a site where permission would not normally be granted. To grant an unconditional permission would mean that the dwelling could be sold off for general use which may be contrary to development plan policy for the locality. To ensure that the dwelling remains available to meet the identified need, it may therefore be acceptable to grant permission subject to a condition that ties the occupation of the new house to the existing business.

Agricultural and forestry dwellings

100. In many parts of Scotland planning policies impose strict controls on new residential development in the open countryside. There may, however, be circumstances where permission is granted to allow a house to be built to accommodate a worker engaged in bona fide agricultural or forestry employment on a site where residential development would not normally be permitted. In these circumstances, it will often be necessary to impose an agricultural or forestry worker occupancy condition.

101. Planning authorities will wish to take care to frame agricultural occupancy conditions in such a way as to ensure that their purpose is clear. In particular, they will wish to ensure that the condition does not have the effect of preventing future occupation by retired agricultural workers or the dependants of the agricultural occupant.

102. Where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application unless it is shown that circumstances have materially changed and that the agricultural need which justified the approval of the house in the first instance no longer exists.

Retail development

103. Out-of-centre retail developments, including retail parks, can change their composition over time. If such a change would create a development that the planning authority would have refused on the grounds of impact on vitality and viability of an existing town centre, it may be sensible to consider the use of planning conditions to ensure that these developments do not subsequently change their character unacceptably. Any conditions imposed should apply only to the main ranges of goods (eg food and convenience goods, hardware, electrical goods, furniture and carpets) and should not seek to control details of particular products to be sold. For further guidance see NPPG 8: Retailing.

Temporary permissions

104. Section 41(1)(b) of the Act gives power to impose conditions requiring that a use be discontinued or that buildings or works be removed at the end of a specified period. Where permission is granted for the development of the operational land of a statutory undertaker, however, this power does not apply except with the

undertaker's consent (see section 219 of the Act). Conditions of this kind are sometimes confused with conditions which impose a time-limit for the implementation of a permission (paragraphs 45 to 49) but they are quite distinct and different considerations arise in relation to them.

Principles applying to temporary permissions

105. In other cases, in deciding whether a temporary permission is appropriate, three main factors should be taken into account. Firstly, it will rarely be necessary to give a temporary permission to an applicant who wishes to carry out development which conforms with the provision of the development plan. Secondly, it is undesirable to impose a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent. Lastly, the material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. Thus, the reason for granting a temporary permission can never be that a time-limit is necessary because of the effect of the development on the amenity of the area. Where such objections to a development arise they should, if necessary, be met instead by conditions whose requirements will safeguard amenity. If it is not possible to devise such conditions and the damage to amenity cannot be accepted, then the proper course is to refuse permission. These considerations mean that a temporary permission will normally only be appropriate either where the applicant himself proposes temporary development or when a trial run is needed in order to assess the effect of the development on the area.

Short-term buildings or uses

106. Where, therefore, a proposal relates to a building or use which the applicant is expected to retain or continue only for a limited period, whether because he has specifically volunteered that intention or because it is expected that the planning circumstances will change in a particular way at the end of that period, then a temporary permission may be justified. For example, permission might reasonably be granted on an application for erection of a temporary building to last seven years on land which will be required for road improvements eight or more years hence, although an application to erect a permanent building on the land would normally be refused.

Trial runs

107. Again, where an application is made for permanent permission for a use which may be a "bad neighbour" to existing uses nearby but there is insufficient evidence to enable the authority to be sure of its character or effect, it might be appropriate to grant a temporary permission in order to give the development a trial run, provided that such a permission would be reasonable having regard to the capital expenditure necessary to carry out the development. However, a temporary permission would not be justified merely because, for example, a building is to be made of wood rather than brick. Nor would a temporary permission be justified on the grounds that, although a particular use, such as a hostel or playgroup, would be acceptable in a certain location, the character of its management may change. In certain circumstances it may be possible to grant temporary permission for the provision of a

caravan or other temporary accommodation, where there is some evidence to support the grant of planning permission for an agricultural or forestry dwelling but it is inconclusive, perhaps because there is doubt about the sustainability of the proposed enterprise. This allows time for such prospects to be clarified.

108. A second temporary permission should not normally be granted. A trial period should be set that is sufficiently long for it to be clear by the end of the permission whether permanent permission or a refusal is the right answer. Usually a second temporary permission will only be justified where road or redevelopment proposals have been postponed or in cases of hardship where temporary instead of personal permission has been granted for a change of use.

Restoration of sites

109. If the temporary permission is for development consisting of, or including, the carrying out of operations, it is important to make provision by condition for the removal of any buildings and works permitted- not merely for the cessation of the use- and for the reinstatement of the land when the permission expires. Where the permission is for temporary use of land as a caravan site, conditions may include a requirement to remove at the expiry of the permission any buildings or structures, such as toilet blocks, erected under Class 17 of the General Permitted Development Order.

Access for disabled people

110. Where a building is new or is being altered, it is usually sufficient to rely on building regulations to ensure adequate access for disabled people. However, some new development does not require building regulation approval, eg development affecting the setting of buildings (layout of estates, pedestrianisation etc) rather than the buildings themselves. Where there is a clear planning need, it may be appropriate to impose a condition to ensure adequate access for disabled people.

Seasonal use

Seasonal occupancy conditions

111. Occasionally it may be acceptable to limit the use of land for a particular purpose to certain seasons of the year. For example, where planning permission is being granted for a caravan site, the planning authority may think it necessary to impose a condition to ensure that during the winter months the caravans are not occupied and are removed for storage to a particular part of the site or away from the site altogether. Where such a condition is imposed, particular care should be taken to see that the condition allows a reasonable period of use of the caravans in each year. A similar approach may be taken where it is necessary to prevent the permanent residential use of holiday chalets, which by the character of their construction or design are unsuitable for continuous occupation. Seasonal occupancy conditions may also be appropriate to protect the local environment, for example, where the site is near a fragile habitat which requires peace and quiet to allow seasonal breeding or winter feeding to take place.

Holiday occupancy conditions

112. In recent years there has been an increased demand for self-catering holiday accommodation- whether new buildings (including mobile homes) or converted properties- which may be constructed to a standard that would equally support permanent residence in some comfort. But this accommodation may also be located in areas in which the provision of permanent housing would be contrary to national policies on development in the countryside or not in accordance with development plan policies, or both. The Secretary of State considers that the planning system should respond to these changes without compromising policies to safeguard the countryside.

113. There may be circumstances where it will be reasonable for the planning authority to grant planning permission for holiday accommodation as an exception to these policies, with a condition specifying its use as holiday accommodation only. For example, conversions of redundant buildings into holiday accommodation where conversion to residential dwellings would not be permitted may reduce the pressure on other housing in rural areas. A holiday occupancy condition would seem more appropriate in those circumstances than a seasonal occupancy condition. But authorities should continue to use seasonal occupancy conditions to prevent the permanent residential use of accommodation which by the character of its construction or design is unsuitable for continuous occupation, particularly in the winter months.

[Addendum to Circular 4/1998](#)

Planning series:

National Planning Policy Guidelines (NPPGs) provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.

Circulars, which also provide statements of Government policy, contain guidance on policy implementation through legislative or procedural change.

Planning Advice Notes (PANs) provide advice on good practice and other relevant information.

Statements of Government policy contained in NPPGs and Circulars may, so far as relevant, be material considerations to be taken into account in development plan preparation and development control.

PLANNING APPEAL STATEMENT

FESTIVAL VILLAGE, WAVERLEY MARKET

03 FEBRUARY 2023



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1.0 INTRODUCTION

- 1.1 This Planning Appeal Statement has been prepared by Montagu Evans in support of an appeal made to the Local Review Body by Moolmoor Waverley Limited ('the Appellant' for the purposes of this appeal) against the refusal of planning application reference 22/04639/FUL (the 'Application') by The City of Edinburgh Council ('the Council'). An index of all documents referred to in this Appeal Statement is provided at the end of this Statement.
- 1.2 The Application comprised:
- “Temporary use of the Waverley Market roof top for pop-up Festival Village, including erection of structures and provision of cafe, bars, food and drink uses, retail kiosks, toilets, seating and ancillary facilities and works”*
- 1.3 The appeal site is located on the rooftop of Waverley Market.
- 1.4 This Planning Appeal Statement demonstrates why the Application should be granted.

BACKGROUND

- 1.5 The Application was refused by the Council on 9 December 2022 for the following reasons:
1. Over a continuous period of three years the proposal will have a detrimental impact on the character and appearance of the New and Old Town conservation areas and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 6 (Conservation Areas - Development).
 2. Over a continuous period of three years the proposal will have an adverse impact on the setting of a number of nearby listed buildings and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 3 (Listed Buildings - Setting).
 3. Over a continuous period of three years the proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site contrary to Local Development Plan Policy Env 1 (World Heritage Sites).
 4. Over a continuous period of three years the proposal does not represent a high quality design that safeguards the historic environment and is therefore contrary to Local Development Plan policies Del 2 (City Centre) and Ret 7 (Entertainment and Leisure Developments - Preferred Locations).
 5. The proposal is of a poor-quality design which is inappropriate over a period of three continuous years and damaging to the special character and appearance of the site and its surroundings. The proposal is therefore contrary to Local Development Plan policies Des 1 (Design Quality and Context) and Des 4 (Development Design - Impact on Setting).
- 1.6 This Planning Appeal Statement and submitted documents set out the reasons why planning permission should be granted and addresses the Council's reasons for refusal.
- 1.7 The Festival Village has operated on the rooftop of Waverley Market since 2017 (Refer to COVID Measures and include Chief Planner's letters within Appendices) and has made a significant contribution to both the economy of Edinburgh and the vibrancy and vitality of the city centre. The site has become a key attraction for both residents and tourists alike, which has brought activity and animation to a previously disused city centre asset. The Festival Village operation has created a considerable number of employment opportunities across a

range of sectors, including for trades people, security, bar and cleaning staff, as well as sound engineers and musicians.

- 1.8 Festival Village has now operated for a period of five years without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a variety of letters of support were provided in support of the submitted application for planning permission.
- 1.9 The reasons for refusal are addressed in detail in Section 5 of this Planning Appeal Statement.

2.0 THE PROPOSED DEVELOPMENT

- 2.1 The Appellants aspiration for the site is to provide a temporary, active, managed use for the rooftop of Waverley Market, to include family friendly facilities that support the needs of both locals and visitors, whilst providing economic benefits for the city as a whole. The approach is proposed as a temporary solution until such time as the market and economic circumstances recover to allow the owners of Waverley Mall to implement the permanent proposals consented under planning permission reference 18/02748/FUL approved on 1 August 2019. Development formally commenced in relation to this planning permission on 24 January 2022. The current proposals fully accord with the principles and general approach of this permission.
- 2.2 The Appellant proposes to complete this development as soon as practically possible, but the onset of COVID-19 in March 2020 and the ensuing social and economic turmoil, for obvious reasons the Appellant needed an extended period to progress with discussions with both occupiers and funders in order to progress the consented development. In order maintain activity on the roof, manage the ongoing anti-social behaviour and crime issues on site, and importantly to support jobs during the recovery period, the Appellant sought to extend the temporary uses on the rooftop for a further temporary period. This approach is considered to be fully in line with Scottish Government guidance which supports well-measured temporary solutions, such as the Festival Village, and acknowledges these temporary solutions have an important role in supporting the post-pandemic recovery and job creation.
- 2.3 The proposals as submitted include the following elements:
- Units to be used as cafes, bars or food outlets;
 - Retail kiosks located at the eastern boundary of the application site;
 - Areas of both covered and uncovered seating;
 - Back of house service areas;
 - Toilet facilities; and
 - Areas of decking and two small stage areas for music and live performances.

PLANNING HISTORY OVERVIEW

- 2.4 Planning permission was granted for the development of Waverley Market on 18 May 1982, which included retail, restaurant, public house and tourist activity uses (reference ED/17/80). The site therefore has an extensive planning history that relates to both its use as a shopping centre, as well as in relation to the use of the rooftop level for a variety of temporary activities.

REDEVELOPMENT OF WAVERLEY MARKET

- 2.5 Following the conclusion of a Section 75 legal agreement planning permission was granted for the redevelopment of Waverley Market on 1 August 2019, which included the *“reconfiguration of roof-top structures and construction of new commercial accommodation (Class 1, 2 and 3), internal cinema use (Class 11) and creation of external multi-use space to include external seating area, performance space, open air cinema, festival/seasonal event space, pop-ups, farmers market and musical entertainment (Classes 1, 2, 3 and 11)”* (application reference 18/02748/FUL). Following the discharge of the suspensive planning conditions, development associated with implementing the planning permission commenced on site on 24 January 2022, which was confirmed to the Council in a Notification of Initiation of Development.

- 2.6 Planning permission was granted for the construction of a single storey U-shaped commercial building on the rooftop of Waverley Market, which will provide floor space for commercial premises across Class 1, Class 2 and Class 3 Uses as per the Town and Country Planning (Use Classes) (Scotland) Order 1997. Planning permission was also granted for the use of a proposed plaza on the rooftop as a multi-use space that could accommodate performances, farmers markets, pop-ups, music entertainment and an open-air cinema. In moving to grant planning permission for the redevelopment, the CEC considered that:
- The development would provide high quality commercial and retail space in a prominent city centre location, which would contribute to the role of the city as a strategic business and regional shopping centre.
 - The rooftop has an extensive history of being utilised for various entertainment uses during the festival and Christmas periods and so it would therefore be appropriate to allow the plaza to be used for such activities in the future.
- 2.7 A non-material variation to the consent granted, which related to a number of minor design changes, was approved by the CEC on 26 August 2020 (reference 18/02748/VARY).

TEMPORARY ROOFTOP USES

- 2.8 The rooftop level of Waverley Market has a long history of accommodating temporary developments, which have generally coincided with other shorter term attractions that take place across the city each year, such as the Fringe Festival and Christmas markets.
- 2.9 The Festival Village has operated on the rooftop of Waverley Market since 2017 and has made a significant contribution to both the economy of Edinburgh and the vibrancy and vitality of the city centre. The site has fast become a key attraction for both residents and tourists alike, which has brought activity and animation to a previously disused city centre asset. The Festival Village operation has created a considerable number of employment opportunities across a range of sectors, including for trades people, security, bar and cleaning staff, as well as sound engineers and musicians. Festival Village has now operated for a period of five years without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a variety of letters of support have been provided in support of the submitted application for planning permission, including from Police Scotland.

CHIEF PLANNER LETTERS

- 2.10 To support the hospitality industry as it re-opened following lockdowns associated with the Covid-19 pandemic, and in recognition of the fact that outdoor uses such as the operation at Festival Village would be needed for longer periods of time whilst social distancing rules were in place, the Chief Planner and the Minister for Local Government, Housing and Planning issued a series of advice letters on between 29 May 2020 and 1 July 2022 encouraging Local Planning Authorities ('LPAs') to informally relax planning controls. The letters advised that LPAs should agree not to take enforcement action against acceptable planning breaches for temporary uses in situ for more than 28 days, which would ultimately allow businesses to operate.
- 2.11 This guidance was formally withdrawn on 1 October 2022. The application for the temporary continuation of the Festival Village was submitted in September 2022, in advance of the October deadline, to seek to regularise matters from a planning perspective to allow the use to continue for a further temporary period.
- 2.12 Whilst it is fully acknowledged that the relaxation of planning controls was a temporary measure to respond to the specific challenges of the pandemic, it should also be noted that the Chief Planner letters highlighted the importance of such measures in enabling businesses to get back up and running following the pandemic, and also support them to regain some lost ground and retain employment in an extremely challenging economic environment. The submitted Design Statement and Planning Statement summarises the employment opportunities created as a direct result of the Festival Village, noting that in 2021/22, Festival Village created in

the region of 425 jobs, in a range of sectors, including trades people and security staff, bar and cleaning staff, as well as musicians and sound engineers.

Table 1 – Jobs Created at Festival Village in 2021/22

Sector	Number of Jobs Created
Trades People/ Security Staff	60
Bar and Cleaning Staff	305
Musicians and Sound Engineers	60
Total	425

- 2.13 Closure of the Festival Village would result in the loss of these jobs.
- 2.14 Whilst the period of lockdowns associated with the pandemic has now passed, businesses are still in a recovery phase and the need to diversify, evolve and support jobs is more vital than ever, particularly in the wider economic context. Whilst the withdrawal of the temporary relaxation period coincided with the end of lockdown restrictions, it does not mean that the economic recovery period from pandemic related impacts is also complete. Planning should be to continue to support well-measured temporary solutions to help businesses and services to operate and to recover as best they can and continue to support jobs.
- 2.15 The Chief Planner letter of October 2022 also acknowledges the permitted development rights (PDR) review programme. The review of PDR reflected that as well as enabling businesses to operate safely during the pandemic, the use of outdoor space can help to make places more vibrant and welcoming. The review also highlighted that the pandemic period has highlighted that there is an appetite for outdoor socialising, eating and drinking in a Scottish climate, which is reflected in the popularity of the Festival Village. The letter advises that *“planning authorities should take this evolving context into account when considering the expediency of any planning enforcement action at this time”*.
- 2.16 It is therefore considered that the various Chief Planner letters noted above, and appended to this submission, support well-measured temporary solutions such as Waverley Market which have an important role in supporting the post-pandemic recovery and job creation, particularly as an interim measure pending the development of the consented scheme.

PREVIOUS APPLICATIONS FOR TEMPORARY USES

- 2.17 The below section sets out a number of applications for temporary uses that have been considered by the Council in recent years and provides an overview of the Council's consideration of the proposals.

20/03336/FUL | POP-UP EVENT ON MALL ROOF, CONSISTING OF CANVAS TIPI BAR AND FOOD TRUCK. DECORATED WITH FESTOON LIGHTING (AS AMENDED)

- 2.18 The application was granted planning permission on 29 October 2020 for a temporary period of use between 7 October 2020 and 10 January 2021. The consented development included the provision of a canvas tipi tent that housed a bar area with internal and external seating and an external food truck. A back of house storage unit to the rear of the site was also approved. The Council granted planning permission for the following reasons:
- The temporary commercial development would contribute to the city centre's vitality and role as a strategic business and regional shopping centre.
 - The development's impact on existing character and amenity would be limited by the temporary nature of the development (and was therefore considered to be justified).
 - As a time limited temporary development, there would not be a significant or long term detrimental effect on the special character or appearance of the New Town Conservation Area.

19/04390/FUL | ERECTION (TEMPORARY) OF FESTIVAL VILLAGE EXTENSION, INCLUDING: BAR AREAS, BEER GARDEN, LIVE STAGE AREA, HOT FOOD KIOSKS, ASSOCIATED SEATING AREA, TOILETS AND ASSOCIATED STRUCTURES/WORKS (INCLUDING WINTER MARQUEE).

2.19 The application was withdrawn by the Appellant on 19 February 2020 and related to the erection of a temporary stage, bar units, hot food units, seating for 250 people and toilet provision on the roof top of Waverley Market.

19/04383/FUL | ERECTION (TEMPORARY) OF FESTIVAL VILLAGE: INCLUDING PUBLIC HOUSE/BAR AREAS, BEER GARDEN, LIVE STAGE AREA, HOT FOOD KIOSKS, ASSOCIATED SEATING AREA, TOILETS (INCLUDING DISABLED) AND ASSOCIATED STRUCTURES/WORKS (PARTIALLY IN RETROSPECT)

2.20 The application accompanied the above submission (application reference 19/04390/FUL), which was also withdrawn by the Applicant on 19 February 2020. The application related to the dates that the proposed Festival Village would be in operation.

2.21 The above two applications were withdrawn following initial feedback regarding the level of overarching infrastructure proposed to support the proposals, and also in response to concerns made regarding the very much temporary and seasonal nature of the structures and proposed operations.

2.22 This is in stark contrast to the current proposals which seek to provide a year round facility, designed and able to operate in all weathers, with high quality semi-permanent structures designed to ensure safe, effective and efficient operation for front and back of house elements, and to deliver a high quality facility to enhance the site and surroundings.

17/03159/FUL | ERECTION (TEMPORARY) OF FESTIVAL VILLAGE INCLUDING: PUBLIC HOUSE/BAR AREAS, BEER GARDEN, LIVE STAGE AREA, HOT FOOD KIOSKS, ASSOCIATED SEATING AREA, TOILETS (INC. DISABLED) AND ASSOCIATED STRUCTURES/WORKS (AS AMENDED)

2.23 The application was granted planning permission on 13 November 2017, subject to conditions, for temporary periods between November 15 2017 to January 15 2018; July 1 2018 to September 1 2018; November 15 2018 to January 15 2019; and July 1 2019 to September 1 2019. Three distinct areas were consented, including the 'Fizz and Pearl Champagne Bar' and 'Butcher Bay'. A live stage area was initially proposed but was later removed during the assessment of the application. The Council granted planning permission for the following reasons:

- The development was an appropriate temporary commercial development that would be in situ during the summer festivals and Edinburgh's Christmas festival, which would contribute to the role of the city as a strategic business and regional shopping centre.
- As the development was a temporary development, the overall visual impact on the character of the Princes Street Streetscape was acceptable.
- The removal of the live stage area from the development would limit performances taking place at the site, having regard to the amenity of the surrounding area.
- The proposal did not involve development which would result in the permanent loss of open space.

2.24 An application to vary the permitted periods of operation consented as per application 17/03159/FUL to June 15 2018 to September 1 2018; November 15 2018 to January 1 2019; and June 15 2019 to September 1 2019 was granted on 5 September 2018 (application reference 18/02610/FUL).

16/04882/FUL | TEMPORARY PROVISION OF CHRISTMAS ATTRACTIONS ON ROOF CONCOURSE FROM 18 NOVEMBER 2016 UNTIL 8 JANUARY 2017

2.25 Planning permission was granted on 12 December 2016 and related to the provision of temporary Christmas attractions on the site, including fairground rides and games, stalls and a fire pit. The planning permission granted was for a limited period between 18 November 2016 until 8 January 2017, equivalent to 51 days. The Council granted planning permission for the following reasons:

- Temporary planning permission had previously been granted on the site for Christmas attractions and the principle of a short term temporary Christmas attraction was therefore already established on this site.
- Given the site's city centre, mixed use context the development was unlikely to have a detrimental impact on neighbouring amenity.

16/01660/FUL | ERECT TEMPORARY ENTERTAINMENT STRUCTURE ON WESTERN ROOF TERRACE OF PRINCES MALL (AS AMENDED)

2.26 Planning permission was granted on 25 May 2016 for temporary period between 20 June 2016 to 31 August 2016, equivalent to 73 days. The application proposed a temporary 'Bungee Dome' attraction on the site, which included one bungee dome and two bubble pods. The dome and pods will be generally spherical in shape and constructed around a frame enclosed with clear and coloured plastic. The Council granted planning permission as they considered that:

- Temporary planning permission had previously been granted on the site and the principle of a short term temporary attraction was therefore established.
- Given the site's city centre, mixed use context the development was unlikely to have a detrimental impact on neighbouring amenity.

15/05426/FUL | ERECTING A TRADITIONAL CAROUSEL, DISPENSE STANDS, KIOSK AND PLANTERS ON THE PUBLIC CONCOURSE.

2.27 The application was refused planning permission on 18 January 2016. The application sought consent for a carousel, three dispense stands and three planters to be located on the corner of Princes Street and Market Street, along with an ice-cream kiosk to be positioned outside the entrance to the Tourist Information Centre. Consent was requested for a continuous period of three years.

2.28 The application was determined under the then Edinburgh City Local Plan. The Council's key reason for refusing to grant planning permission was that the carousel and dispense stands did not relate positively in design or material to the special character and appearance of the New Town Conservation Area or World Heritage Site and would create a 'theme park' type environment not in keeping with the historical context.

15/04266/FUL | ERECTION OF CHRISTMAS ATTRACTIONS ON THE PUBLIC CONCOURSE OF THE ROOF OF PRINCES MALL

2.29 The application was granted planning permission on 3 November 2015 for a limited period between 12 November 2015 and 4 January 2016. The development included the provision of temporary attractions on the rooftop level, including six small rides, a food stall, three token/ticket booths and a live reindeer farm. In moving to grant planning permission, the Council considered that:

- The site has previously housed similar temporary stalls and activities in previous years therefore the principle of temporary attractions was established.
- The proposed temporary nature of the use would not result in the loss of open space, nor would it impact upon the quality and character of the surrounding area.
- Due to the temporary nature of the development, and nearby similar temporary development, there would be no significant or long-term impact on amenity.

13/04424/FUL | THE ERECTION OF 31 MARKET STALLS ON THE ROOF TERRACES

2.30 Planning permission was granted on 20 December 2013 for a temporary three-year basis and included the provision of 31 box stalls, a picnic area and retractable freeform tent. The markets had consent to operate over Easter, Summer and Winter Festival periods and the length of time that the market development could be in situ was restricted to 20 weeks or 140 days per calendar year. Stalls and associated equipment were to be removed from the site out with the stipulated periods of use. The Council's reasons for granting planning permission included:

- The extent, scale and form of the stalls were subservient to the sites surroundings and the maximum height of the stalls would only marginally project above the height of the existing upstands to the roof of the shopping mall.
- The proposed temporary nature of the use would not result in the loss of open space, nor would it impact upon the quality and character.
- The development would reinforce the retail vitality of the city centre and create an attractive pedestrian environment, safeguard historic character and improve the appearance of the city centre, including the public realm.
- The nature of the proposed market use was considered to be a positive intervention within the site that would help activate a key area of city centre public realm.
- The area was considered to already experience high levels of ambient noise from early morning until late at night therefore any additional noise from the operation of the market was unlikely to *"noticeably increase the existing ambient noise levels"*.

SUMMARY

2.31 This section has detailed the extensive history of temporary uses being consented on the rooftop of Waverley Market. In addition, of note is planning permission 18/02748/FUL, which relates to the wider redevelopment of Waverley Market. Development associated with implementing this consent commenced on site on 24 January 2022.

2.32 As clearly set out in the above planning history for the site, a key reason why the Council have previously granted permission has been that the developments proposed have been appropriate commercial developments that would contribute towards the city centre's viability and the role of the city as a strategic business and regional shopping centre. In addition, the Council have determined that the site has an extensive history of the rooftop being utilised for temporary uses, therefore the principle of development on the rooftop for temporary periods is well established. As the majority of uses consented on the rooftop have been for a temporary period, the Council have also considered that this will limit any impact on amenity and the historic environment, as well as the loss of open space.

3.0 THE APPLICATION

3.1 The Proposed Development is defined as ‘Local’ under the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

CONSULTATION RESPONSES

3.2 Statutory consultation was undertaken by the Council once the Application was submitted and the following were consulted. The table below provides a summary of the consultation responses.

CONSULTEE	COMMENTS
Network Rail	<p>Network Rail submitted a holding objection and invited further discussion with the Appellant:</p> <p><i>“Whilst Network Rail do not object to the principle of the temporary Festival Village development, Network Rail’s station management team have raised a number of concerns about aspects of the siting, layout and management of the temporary Festival Village which are likely to adversely affect the safe and efficient operation of the railway station. While Network Rail would be happy to engage positively with the applicants to resolve these issues...” [our emphasis]</i></p> <p>The objection raises the following areas of concern:</p> <ul style="list-style-type: none"> - Access / Station Operations – requested the layout be amended to remove any constraints for the lift access to the station. - Safety – relating to antisocial behaviour, fire and litter / bins.
Environmental Protection	Environmental Protection stated the application could not be supported because a Noise Impact Assessment had not been submitted.
Roads	No objection.
Edinburgh World Heritage	Recommended design changes to reduce potential impact but did not object.
Historic Environment Scotland	No comment.
Police Scotland	No objection.
Old Town Community Council	Did not comment.

3.3 We would also note that copies of the consultation responses summarised above were not provided to the Appellant prior to the determination of the application. The concerns raised by Network Rail and Environmental Protection could have been addressed prior to the determination of the application had the Appellant been made aware of their comments.

3.4 The Appellant is in regular correspondence with Network Rail regarding various matters and the issues raised within their holding objection could have been addressed through positive engagement, as indeed suggested by Network Rail. Agreement has been reached with Network Rail, which is currently being documented and we fully anticipate that Network Rail will accept that the solution found and agreed is more than satisfactory. This is a management issue and not directly relevant to the proposal. These agreements relate to the maintenance, repair and policing of the area in question, isolated to the eastern extremity together with the management of that area for fire escape. Coordination is required by both parties for this, and a mechanism is set out in the Servitude Agreement.

- 3.5 The Appellant would have been prepared to instruct a Noise Impact Assessment as requested by Environmental Protection had the Appellant been made aware of this requirement prior to the determination of the application. The very fact that there have been no objections to the existing use on site demonstrates that any noise issues have been carefully controlled and managed over the recent period.
- 3.6 There were also 9 comments from the public made during the application process which was split as follows:
- 7 objections; and
 - 2 neutral comments.
- 3.7 We would also note that the Planning Officer's report did not take into account the 18 letters of support submitted with the application for planning permission and included in Appendix 1 of the submitted Planning Statement.

SUMMARY

- 3.8 In summary there are no fundamental objections to the Proposed Development from statutory consultees.
- 3.9 The consultation responses summarised above were not provided to the Appellant prior to the determination of the application, although it is acknowledged the issues raised within the objections were not the sole reason for refusal.
- 3.10 The Appellant is in regular correspondence with Network Rail regarding various matters and the issues raised within their holding objection could have been addressed through positive engagement, as indeed suggested by Network Rail. Agreement has been reached with Network Rail, which is currently being documented and we fully anticipate that Network Rail will accept that the solution found and agreed is more than satisfactory.
- 3.11 The Appellant would have been prepared to instruct a Noise Impact Assessment as requested by Environmental Protection had the Appellant been made aware of this requirement prior to the determination of the application. The very fact that there have been no objections to the existing use on site demonstrates that any noise issues have been carefully controlled and managed over the recent period.

4.0 PLANNING ASSESSMENT

- 4.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise.
- 4.2 At the time of writing the Development Plan for the appeal site comprises the Strategic Development Plan for South East Scotland ('SESplan'), which was approved by Scottish Ministers with modifications in June 2013, and the Edinburgh Local Development Plan ('LDP'), which was adopted in November 2016.
- 4.3 The Revised Draft NPF4 was published and laid before Parliament on 8 November 2022, and on 11 January 2023 the Scottish Parliament voted to approve NPF4. The Scottish Ministers have now confirmed their intention to adopt and publish NPF4 on 13 February 2023.
- 4.4 The adoption of NPF4 and the commencement of provisions of the Planning (Scotland) Act 2019, in particular Section 13, will make NPF4 part of the statutory development plan from that date. From that date the policies contained in NPF4 will form part of the development plan and will be assessed along with the Edinburgh Local Development Plan (LDP) for all development management decisions.
- 4.5 The adoption of NPF4 will have the effect that National Planning Framework 3 and Scottish Planning Policy are superseded, and that all strategic development plans and their associated supplementary guidance will also cease to have effect from that date.
- 4.6 Until 13 February 2023 NPF4 is not part of the development plan and the weight given to it in decision making is a matter for the decision maker. It is however considered to be a significant material consideration during that period given it has now been approved by the Scottish Parliament.
- 4.7 The Proposed Development raises no strategic matters in relation to SESplan, and as SESplan will cease to have effect from the date of the adoption of NPF4 it is therefore not considered further within this Planning Appeal Statement.

EDINBURGH LOCAL DEVELOPMENT PLAN

- 4.8 The Edinburgh LDP supports Edinburgh's role as Scotland's capital city and recognises its importance as a key driver of the Scottish economy. The LDP states that Edinburgh city centre is the *"vibrant hub of the SESplan region – it's the regional shopping centre and an important tourist destination with a wide range of entertainment and cultural attractions. It has excellent public transport connections and provides employment for over 80,000 people. Edinburgh city centre's stunning setting and iconic architecture is celebrated internationally. It incorporates Scotland's only urban World Heritage Site and also many listed buildings and important green spaces"*.
- 4.9 The LDP directs future growth to four Strategic Development Areas ('SDAs'), including the city centre. Prioritising the development of the city centre is a key objective of the LDP, which sets out the Council's aspirations to maintain its shopping role within the Region and to attract more investment. In terms of shopping and leisure, a key aim of the LDP is to sustain and enhance the city centre as the regional focus for shopping, entertainment, commercial leisure and tourism related activities and to encourage appropriate development of the highest quality.
- 4.10 The site is subject to the following policy designations within the LDP Proposals Map:
 - Old and New Towns of Edinburgh World Heritage Site;

- New Town Conservation Area;
- City Centre;
- Urban Area;
- Local Nature Conservation Site;
- Open Space – Princes Mall;
- City Centre Retail Core.

4.11 An extract of the LDP Proposals Map is included below:

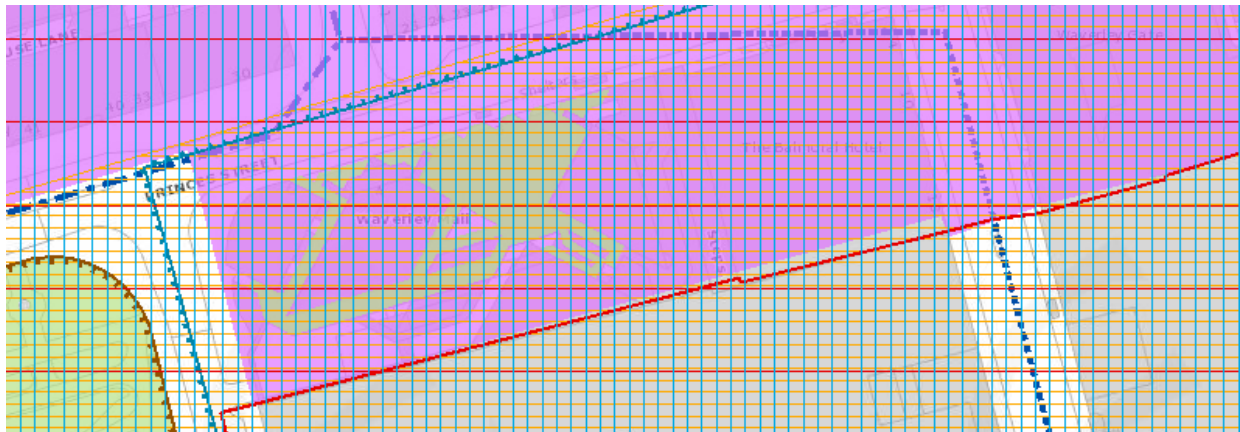


Figure 1- Extract of LDP Proposals Map

THE PRINCIPLE OF DEVELOPMENT

4.12 **Policy Del 2 City Centre** supports development which will retain and enhance the character, attractiveness, vitality and accessibility of the City Centre and contributes to its role as a strategic business and regional shopping centre and Edinburgh's role as a capital city. The requirements of Policy Del 2 are outlined in the table below:

POLICY DEL 2 CRITERIA	COMMENT
Comprehensively designed proposals which maximise the potential of the site in accordance with any relevant development principles, development brief and/or other guidance	<p>The Appellant has refined the Festival Village offering over its years of operation and it is considered that the submitted proposals enhance the attractiveness and vitality of the city centre. Specific measures to enhance the visual appearance of the spaces include:</p> <ul style="list-style-type: none"> - roofing material (retractable, aluminum roofs); - reducing the columns of the roof by half; - using appropriate paint and fixings; - removing the high-level advertising; and - increased the budget spend on floral decorations <p>The Proposed Development is therefore considered to be acceptable in design terms in the context of a temporary development.</p>
A use or a mix of uses appropriate to the location of the site, its accessibility characteristics and the character of the surrounding area	<p>The rooftop level of Waverley Market has a long history of accommodating temporary developments, with the Festival Village operating since 2017. The site has made a significant contribution to both the economy of Edinburgh and the vibrancy and vitality of the city centre in that time and has brought activity and</p>

POLICY DEL 2 CRITERIA	COMMENT
	animation to a previously disused city centre asset, without receiving any complaints from neighbouring businesses or residents. The use of the site is therefore considered to be appropriate to the location of the site and the characteristics of the surrounding area.
Where practicable, major mixed use developments should provide offices, particularly on upper floors. At street level, other uses may be more appropriate to maintain city centre diversity, especially retail vitality on important shopping frontages	Not relevant to this proposal.
The creation of new civic spaces and traffic-free pedestrian routes where achievable	The Festival Village has improved the vitality and vibrancy of the Waverley Market roof, and has become a key attraction for both residents and tourists alike, which has brought activity and animation to a previously disused city centre asset. As acknowledged in Police Scotland's supporting letter the rooftop area had previously been a problem area for anti-social behaviour, and the presence of the Festival Village and its security staff has resulted in reduced opportunities for anti-social behaviour. The space has been of significant benefit to the area and the continued use of the roof will continue to deliver those benefits.

- 4.13 [Policy Ret 1 Town Centres First Policy](#) states that planning permission will be granted for retail and other uses which generate a significant footfall, including commercial leisure use, following a town centre first sequential approach. As the site is located within the City Centre, the proposed use is in accordance with Policy Ret 1.
- 4.14 [Policy Ret 7 Entertainment and Leisure Developments - Preferred Locations](#) states planning permission will be granted for high quality, well designed arts, leisure and entertainment facilities and visitor attractions in the city centre, subject to the following criteria:

POLICY RET 7 CRITERIA	COMMENT
The proposal can be integrated satisfactorily into its surroundings with attractive frontages to a high quality of design that safeguards existing character	<p>The Festival Village has operated since 2017 and has improved the vibrancy and vitality of the city centre in that time and has brought activity and animation to a previously disused city centre asset, without receiving any complaints from neighbouring businesses or residents.</p> <p>The principle of the use at the Waverley Market roof is now well established and is considered to both complement the existing character of the city centre, as well as add to the diverse range of uses present in the area. The design of the proposal has been significantly enhanced since its initial opening and is considered to be acceptable in the context of a temporary proposal.</p>

POLICY RET 7 CRITERIA	COMMENT
The proposal is compatible with surrounding uses and will not lead to a significant increase in noise, disturbance and on-street activity at unsocial hours to the detriment of living conditions for nearby residents	<p>The Festival Village has operated since 2017 and has improved the vibrancy and vitality of the city centre in that time and has brought activity and animation to a previously disused city centre asset, without receiving any complaints from neighbouring businesses or residents.</p> <p>As acknowledged in Police Scotland's supporting letter the rooftop area had previously been a problem area for anti-social behaviour, and the presence of the Festival Village and its security staff has resulted in reduced opportunities for anti-social behaviour. The space has been of significant benefit to the area and the continued use of the roof will continue to deliver those benefits.</p>
The development will be easily accessible by public transport, foot and cycle	The site is highly accessible being in close proximity to Waverley Station, bus and tram stops and adjacent active travel routes.

- 4.15 As noted in the planning history for the site, planning permission has been granted for the use of the rooftop of Waverley Market for temporary uses on a number of occasions. The principle of using the rooftop for temporary uses, such as those that are proposed by this application for planning permission, is therefore considered to be well established and acceptable to the Council.
- 4.16 The Proposed Development seeks consent for a temporary period of 12 months. A publicly accessible plaza has been consented as per planning permission 18/02748/FUL, which it is proposed will be used as a multi-use space that could accommodate similar uses including performances, farmers markets, pop-ups, music entertainment and an open-air cinema.
- 4.17 As a major tourist and leisure destination for both residents and visitors, the city centre of Edinburgh is the prime location for the type development proposed by this application. The Applicant has refined the Festival Village offering over its years of operation, and continued to improve the offer over that period to meet its customers requirements and it is considered that the submitted proposals enhance the attractiveness and vitality of the city centre. Every major European City has external seating and entertainment areas and these are regarded as very important spaces within a wider City Centre offer. The rooftop of the Waverley Market has previously been an under-utilised area of land that is located in a highly accessible central location, which is easily accessible by public transport, on foot and by cycling.
- 4.18 The Appellant has supplied compelling evidence of the control of anti-social behaviour events in this location, as supported by Police Scotland statement. Litter, needles and other waste material have been left on site in those areas not carefully controlled, and this application will ensure the careful and controlled management, security and safety of the area 24/7. Indeed the Balmoral Hotel have expressed no concerns with the existing operations on site, only those areas sitting at the far eastern extremity of the site which is currently not under Festival Village's control and management. This would be resolved immediately with the small extension of the area.
- 4.19 The proposed use of the site as the Festival Village pop-up maximises the potential of the site, in the heart of the city centre. The application site is surrounded by a mix of commercial uses, therefore the Festival Village pop-up is considered to both complement the existing character of the city centre, as well as add to the diverse range of uses present in the area.

- 4.20 As acknowledged in Police Scotland's supporting letter the rooftop area had previously been a problem area for anti-social behaviour prior to the occupation by the Festival Village, and the presence of the Festival Village and its security staff has resulted in reduced opportunities for anti-social behaviour. 24/7 security has been proven to deter any behaviour of this nature on the site itself. It is important that visitors and customers have an enjoyable and relaxing visit without feeling threatened, or at risk. Festival Village has ensured that.
- 4.21 The space has been of significant benefit to the area and the continued use of the roof for a further temporary period will continue to deliver those benefits. The Festival Village operation has created a considerable number of employment opportunities across a range of sectors, including for trades people, security, bar and cleaning staff, as well as sound engineers and musicians.
- 4.22 It is therefore submitted that the Appellant's proposals will ensure the very important control of increasing anti-social behaviour issues the city Centre is now facing. A real threat to the resident population and visitors alike as well as the perception of the city centre, its safety and attractiveness.
- 4.23 It is submitted that the Proposed Development is in accordance with the requirements of Policy Del 2 City Centre, Policy Ret 1 Town Centres First Policy and Policy Ret 7 Entertainment and Leisure Developments – Preferred Locations, when considered in the context of the planning history of the site and the temporary nature of the proposals.

DESIGN

- 4.24 [Policy Des 1 Design Quality and Context](#) sets out that planning permission will be granted where it is demonstrated that the proposals will create or contribute towards a sense of place, with design based on an overall design concept which draws upon the positive characteristics of the surrounding area.
- 4.25 [Policy Des 4 Development Design – Impact on Setting](#) states that planning permission will be granted for development where it is demonstrated that it will have a positive impact on its surroundings, including the character of the wider townscape and landscape, and impact on existing views, having regards to:
- a. Height and form;
 - b. Scale and proportions, including the spaces between buildings;
 - c. Position of buildings and other features on the site; and
 - d. Materials and detailing.
- 4.26 The design and appearance of the Festival Village has been continually refined and developed since its opening in 2017, such that it is now considered to be a high quality temporary solution for the site. This has included the use of fixed and retractable aluminium roofs, the reduction of the columns on site, the use of appropriate paint colours and fixings having regard to the character of the surrounding area and removing high level advertising. The height and form of the development has been designed to ensure that it can be integrated into the roofscape of Waverley Market whilst maximising a previously underutilised space.
- 4.27 As the success of the activity on the rooftop has increased, the Festival Village has contributed towards creating a sense of place in a key city centre location.
- 4.28 It is therefore submitted that the Proposed Development aligns with the requirements of Policy Des 1 and Policy Des 4, taking into consideration the temporary nature of the use.
- 4.29 We would note that whilst the application form and accompanying documents suggested a temporary period of 3 years, the description of development does not specify a term. The Appellant would therefore be content to

agree to a shorter temporary 12 month period, if it were considered that a shorter period would help to mitigate the perceived harm set out in the reasons for refusal. This is discussed in further detail in Section 5.

- 4.30 As the development is temporary in nature, the development will only feature at the site for a limited period of 12 months and the overall design concept is considered to be an appropriate response.

HISTORIC ENVIRONMENT

- 4.31 **Policy Env 1 World Heritage Sites** sets out that development which would harm the qualities which justified the inscription of the Old and New Towns of Edinburgh World Heritage Site or would have a detrimental impact on a site's setting will not be permitted.
- 4.32 **Policy Env 3 Listed Buildings – Setting** states that development within the curtilage or affecting the setting of a listed building will be permitted only if not detrimental to the architectural character, appearance or historic interest of the building, or to its setting.
- 4.33 **Policy Env 6 Conservation Areas – Development** provides the following criteria whereby development within a conservation area or affecting its setting will be permitted:
- a. preserves or enhances the special character or appearance of the conservation area and is consistent with the relevant conservation area character appraisal;
 - b. preserves trees, hedges, boundary walls, railings, paving and other features which contribute positively to the character of the area; and
 - c. demonstrates high standards of design and utilises materials appropriate to the historic environment.
- 4.34 The scale of the development proposed has had regard to the historic environment that surrounds the application site and relates sensitivity to the character of the New Town Conservation Area and World Heritage Site. The position of fixed structures has sought to ensure that no key views are infringed upon. In addition, as the development is temporary in nature, the development will only feature at the site for a limited period of time. The heights of these structures also do not exceed any of those permitted in the permanent consent.
- 4.35 It is considered that the temporary nature of the Proposed Development will not cause significant harm to the qualities of the World Heritage Site or its setting, and that it relates sensitivity to the setting of neighbouring listed building and the New Town Conservation Area. It is relevant in this regard that neither Historic Environment Scotland nor Edinburgh World Heritage objected to the application.
- 4.36 It is therefore submitted that due to its temporary nature the Proposed Development does not conflict with Policy Env1, Policy Env 3 and Policy Env 6, and any perceived harm in the short term should be carefully balanced against the significant economic and social benefits associated with the development.

AMENITY

- 4.37 **Policy Des 5 Development Design – Amenity** states that proposals will be supported where the amenity of neighbouring developments is not adversely affected.
- 4.38 The application site is located within the city centre, where there is already a high level of ambient street noise from early morning until late at night and the proposal is therefore unlikely to noticeably increase existing ambient noise levels. There is not a significant residential population located in proximity to the site, therefore it is not considered that there will be any significant impact on amenity.
- 4.39 The site is an established area within the city centre where temporary uses and pop-ups are frequently located. Festival Village has now operated for a number of years without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a

variety of letters of support have been provided as part of the submitted application for planning permission, including Police Scotland as detailed above in relation to Policy Res 7 criterion b).

- 4.40 A Management Statement was subsequent submitted in support of the application for planning permission in November 2022. This statement also works in conjunction with and in addition to Waverley Market's own professional operational infrastructure. The Management Statement set out measures as to how the site will be managed to prevent any antisocial behaviour and to ensure effective noise and waste management procedures, to ensure the venue continues to be no adverse impact on the surrounding area. This has been prepared from information provided by the operators of the venue, and builds on experience of operating food, beverage and market stall facilities at this location over recent years, as well as bringing in modern management best practice for pop up venues. Importantly, this management regime is tried and tested and has been extremely successful in delivering a safe and enjoyable destination for the city.
- 4.41 The overall approach demonstrates a commitment from the applicant, owners and operators to operating the facility in a safe and efficient manner, and so as to maximise the benefits to users and the local economy whilst minimising the potential for any adverse effects on local amenity, and surrounding uses.
- 4.42 It is therefore considered that the proposals align with the relevant requirements of Policy Des 5 Development Design – Amenity.

OPEN SPACE & NATURE CONSERVATION

- 4.43 **Policy Env 15 Sites of Local Importance** states that development likely to have an adverse impact on the flora, fauna, landscape or geological features of a Local Nature Reserve or a Local Nature Conservation Site will not be permitted. As the site comprises mostly hard surfaces with small grassy areas, the Proposed Development will not affect any protected characteristics and the proposals are considered to comply with Policy Env 15.
- 4.44 **Policy Env 18 Open Space Protection** sets out the criteria for applications that would result in the loss of open space. The majority of the site is identified as 'Civic Space' on the LDP Proposals Map.
- 4.45 The Proposed Development seeks consent for a temporary period. A publicly accessible plaza has been consented as per planning permission 18/02748/FUL, which it is proposed will be used as a multi-use space that could accommodate performances, farmers markets, pop-ups, music entertainment and an open-air cinema.
- 4.46 As the submitted development is temporary, and in light of planning permission 18/02748/FUL that seeks to enhance the quality of the open space at the site, it is considered that there will be no loss of open space and as such, no significant impact on the quality or character of the local environment.
- 4.47 It is submitted that the temporary nature of the development is acceptable in the context of Policy Env 18, as there will be no permanent loss of open space and planning permission 18/02748/FUL provides for an improved publicly accessible plaza.

CONCLUSIONS – EDINBURGH LOCAL DEVELOPMENT PLAN

- 4.48 The proposals will positively enhance the vitality, safety, cleanliness and viability of the city centre and will contribute to Edinburgh's role as a European capital city and regional leisure, shopping and business destination. The development will add to the mix of uses present within the city centre and will create a vibrant city centre attraction that will encourage activity throughout the day and into the evening. In addition, the development will be managed to ensure that there is no adverse impact on neighbouring amenity.
- 4.49 It is considered that the principle of development is in accordance with the development plan and by virtue of the scale and temporary nature of the development proposed, the proposals will not significantly harm the setting

of neighbouring listed buildings, the character and setting of the New Town Conservation Area and World Heritage Site, as well as the designated area of open space.

NATIONAL PLANNING FRAMEWORK 4

4.50 The adoption of NPF4 and the commencement of provisions of the Planning (Scotland) Act 2019, in particular Section 13, will make NPF4 part of the statutory development plan from that date. From that date the policies contained in NPF4 will form part of the development plan and will be assessed along with the Edinburgh Local Development Plan (LDP) for all development management decisions.

4.51 Transitional guidance is due to be published by the Scottish Ministers prior to the adoption of NPF4, however it is worth noting at this stage that Section 13 of the Planning (Scotland) Act 2019 will be brought into force at the same time as NPF4 is adopted, amending the meaning of 'development plan' in Section 24 of the Town and Country Planning (Scotland) Act 1997 (the "1997 Act"). Section 24(3) shall then provide that:

"(3) In the event of any incompatibility between the provision of the National Planning Framework and a provision of a local development plan, whichever of them is the later in date is to prevail."

4.52 As the Edinburgh LDP was adopted in November 2016, where there is an incompatibility identified with NPF4, the relevant NPF4 policy would prevail over the LDP policy. An updated policy framework to reflect this position was approved at a meeting of CEC Planning Committee on 18 January 2023.

4.53 Part 1 – A National Spatial Strategy for Scotland 2045 places a strong emphasis on supporting the recovery from the pandemic, noting that this includes both urgent action as well as addressing long term challenges. NPF4 acknowledges that *"the unprecedented challenge of the pandemic has created difficult conditions for some sectors including hospitality, tourism, and culture"*, and recognises the critical importance of planning in diversifying the offer within our city and town centres, to help them thrive, improve their resilience and anticipate continuing societal, environmental and economic change.

4.54 It is therefore considered that the Proposed Development can draw support from the NPF4 spatial strategy, as a short-term solution which can support the post-pandemic recovery allowing the area to be economically active and support jobs in the short term until the permanent proposals consented via application reference 18/02748/FUL can be completed.

POLICY ASSESSMENT

4.55 This section of the Planning Appeal Statement provides an assessment of the revised proposals against the relevant policies of NPF4.

THE PRINCIPLE OF DEVELOPMENT

4.56 **Policy 9 – Brownfield, vacant and derelict land and empty buildings** seeks to encourage, promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings. Policy 9a states that development proposals that will result in the sustainable reuse of brownfield land including vacant and derelict land and buildings, whether permanent or temporary, will be supported.

4.57 The principle of the Proposed Development is considered to be consistent with Policy 9, as it will provide a sustainable temporary reuse of an underutilised area of land whilst the permanent redevelopment proposals are progressed.

4.58 **Policy 27 – City, town, local and commercial centres** seeks to encourage, promote and facilitate development in city and town centres. Policy 27a sets out that development that enhance and improve the vitality and viability of city centres will be supported and Policy 27b sets out that development proposals should be consistent with

the town centre first approach, whereby proposals which generate significant footfall will be supported in existing city centres.

- 4.59 The principle of development within this prime city centre location, which is highly accessible by all modes of public transport, including tram, rail and bus, is considered to be in consistent with the aims of Policy 27 and can draw significant support from Policy 27a and 27b.
- 4.60 **Policy 31 – Culture and creativity** seeks to encourage, promote and facilitate development which reflects our diverse culture and creativity, and to support our culture and creative industries.
- 4.61 Policy 31b provides explicit support for creative spaces or other cultural uses that involve the temporary use of vacant spaces or property. The Festival Village employs only local musical performers, providing a unique opportunity for young and aspiring acoustic acts to showcase their talent to a worldwide audience, thereby offering cultural benefits to the city. Musicians who have performed at the Festival Village have also reported that it has become an important part of the local music scene in the city.
- 4.62 The Proposed Development can therefore draw significant support from Policy 31b.

DESIGN & SUSTAINABILITY

- 4.63 **Policy 1 – Tackling the climate and nature crisis** states that when considering all development proposals significant weight will be given to the global climate and nature crisis.
- 4.64 **Policy 12 – Zero waste** seeks to encourage, promote and facilitate development that is consistent with the waste hierarchy. The Management Statement sets out measures as to how the site will be managed to ensure effective waste management procedures, to ensure the venue continues to be no adverse impact on the surrounding area. This has been prepared from information provided by the operators of the venue, and builds on experience of operating food, beverage and market stall facilities at this location over recent years, as well as bringing in modern management best practice for pop up venues.
- 4.65 The overall approach demonstrates a commitment from the applicant, owners and operators to operating the facility in a safe and efficient manner, and so as to maximise the benefits to users and the local economy whilst minimising the potential for any adverse effects on local amenity, and surrounding uses.
- 4.66 **Policy 13 – Sustainable transport** seeks to encourage, promote and facilitate developments that prioritise walking, wheeling, cycling and public transport for everyday travel and reduce the need to travel unsustainably. The site is considered to be highly accessible by all modes of public transport, including tram, rail and bus, as well as by walking and cycling. Given the highly accessible nature of the site, the Proposed Development is considered to be in accordance with Policy 13.
- 4.67 **Policy 14 – Design, quality and place** seeks to encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle.
- 4.68 The design and appearance of the Festival Village has been continually refined and developed since its opening in 2017, such that it is now considered to be a high-quality temporary solution for the site. This has included the use of fixed and retractable aluminium roofs, the reduction of the columns on site, the use of appropriate paint colours and fixings having regard to the character of the surrounding area and removing high level advertising. The height and form of the development has been designed to ensure that it can be integrated into the roofscape of Waverley Market whilst maximising a previously underutilised space.
- 4.69 As the success of the activity on the rooftop has increased, the Festival Village has contributed towards creating a sense of place in a key city centre location.

- 4.70 It is therefore submitted that the Proposed Development aligns with the requirements of Policy 14, when the temporary nature of the use is taken into account. As the development is temporary in nature, the development will only feature at the site for a limited period of time and the overall design concept is considered to be an appropriate response.

HISTORIC ENVIRONMENT

- 4.71 Policy 7 – Historic assets and places seeks to protect and enhance historic environment assets and places, and to enable positive change as a catalyst for the regeneration of places.

- 4.72 Policy 7a states:

“Development proposals with a potentially significant impact on historic assets or places will be accompanied by an assessment which is based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change.”

- 4.73 Policy 7d states:

“Development proposals in or affecting conservation areas will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced.”

- 4.74 The site is in close proximity to site in close proximity to listed buildings, and within the New Town Conservation Area and the Edinburgh World Heritage site, although it should be acknowledged that the requirement for a detailed assessment was not in force at the time of the original submission.
- 4.75 The scale of the development proposed has had regard to the historic environment that surrounds the application site and relates sensitivity to the character of the New Town Conservation Area and World Heritage Site. The position of fixed structures has sought to ensure that no key views are infringed upon. In addition, as the development is temporary in nature, the development will only feature at the site for a limited period of time.
- 4.76 It is considered that the temporary nature of the Proposed Development will not cause harm to the qualities of the World Heritage Site or its setting, and that it relates sensitivity to the setting of neighbouring listed building and the New Town Conservation Area. It is relevant in this regard that neither Historic Environment Scotland nor Edinburgh World Heritage objected to the application.
- 4.77 It is therefore submitted that due to its temporary nature the Proposed Development does not conflict with Policy 7, and any perceived harm in the short term should be carefully balanced against the significant economic and social benefits associated with the development.

AMENITY

- 4.78 **Policy 23 – Health and safety** seeks to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing. Policy 23e relates to noise and states that proposals that are likely to raise unacceptable noise issues will not be supported.
- 4.79 The application site is located within the city centre, where there is already a high level of ambient street noise from early morning until late at night and the proposal is therefore unlikely to noticeably increase existing ambient noise levels. There is no significant residential population located in proximity to the site, therefore it is not considered that there will be any significant impact on amenity.

- 4.80 The site is an established area within the city centre where temporary uses and pop-ups are frequently located. Festival Village has now operated for a number of years in its original and improved forms without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a variety of letters of support have been provided as part of the submitted application for planning permission.
- 4.81 The Appellant was not made aware prior to the determination of the application of the requirement for a Noise Impact Assessment to be submitted. The Appellant would have been prepared to instruct a Noise Impact Assessment as requested by Environmental Protection had the Appellant been made aware of this requirement prior to the determination of the application. The Appellant would be happy to agree to a condition requirement the submission of Noise Impact Assessment.

CONCLUSION – NATIONAL PLANNING FRAMEWORK 4

- 4.82 The Proposed Development is considered to be in accordance with the NPF4 spatial strategy, as a short-term solution which can support the post-pandemic recovery allowing the area to be economically active and support jobs in the short term until the permanent proposals consented via application reference 18/02748/FUL can be completed whilst at the same time controlling and managing anti-social behaviour issues in collaboration with Police Scotland.
- 4.83 The Proposed Development can also draw support from the policy framework set out within NPF4, and can draw particular support from Policy 9, Policy 27 and Policy 31b.
- 4.84 The proposals will positively enhance the vitality, safety and viability of the city centre and will contribute to Edinburgh's role as a capital city and regional leisure, shopping and business centre. The development will add to the mix of uses present within the city centre and will create a vibrant city centre attraction that will encourage activity throughout the day and into the evening. In addition, the development will be managed to ensure that there is no adverse impact on neighbouring amenity.
- 4.85 It is submitted that NPF4 support for the Proposed Development as an appropriate temporary response to the opportunities and challenges of this site, and on balance can, and should be supported.

PLANNING CIRCULAR 4/1998

- 4.86 [Planning Circular 4/1998: the use of conditions in planning permissions](#) sets out Government policy on the use of conditions in planning permissions. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission.
- 4.87 Paragraphs 104 – 109 provide guidance in relation to temporary permissions.
- 4.88 Paragraph 105 provides a framework for establishing the appropriateness of a temporary permission. Paragraph 104 notes that temporary permissions are unlikely to be appropriate where the reason for the granting of a temporary permission is due to the effect of the development on the amenity of the area.
- 4.89 As referenced throughout this Planning Appeal Statement, the Festival Village is located within the city centre, where there is already a high level of ambient street noise from early morning until late at night and the proposal is therefore unlikely to noticeably increase existing ambient noise levels. There is not a significant residential population located in proximity to the site, therefore it is not considered that there will be any significant impact on amenity. A management scheme is also in operation.

- 4.90 The presence of on-site safety and security measures at the Festival Village has also significantly reduced instances of anti-social behaviour associated with the rooftop, which has had a positive impact on the amenity of the local area.
- 4.91 It is relevant to note in terms of Paragraph 105 – 106 that the applicant proposed temporary development and that the structures at Festival Village were always intended as temporary structures, and therefore no formal demolition works will be required at the end of the temporary period. It is expected that the planning circumstances will change at the end of the temporary period as the Appellants intention is to take forward the wider redevelopment of Waverley Market consented via planning permission 18/02748/FUL.
- 4.92 Paragraph 108 also advises it may be appropriate to grant a further temporary consent where redevelopment proposals have been postponed. This supports the case for a further temporary period for the Festival Village as an interim measure pending the development of the consented scheme.
- 4.93 Overall it is considered that the proposed approach to a temporary permission is in accordance with Government guidance as set out in Circular 4/1998, as the Appellant has proposed a temporary permission, there will be no adverse impact on amenity, and the it is the Appellants intention is to take forward the wider redevelopment of Waverley Market at the end of the temporary period.

5.0 GROUNDS OF APPEAL

- 5.1 The decision must be made in accordance with Section 25 of the Act, which provides that the determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise. The Appellant's overarching ground of appeal is that the Proposed Development accords with the Development Plan and can draw support from NPF4, and planning application should have been granted for an appropriate temporary period of 12 months.

GROUNDS OF APPEAL

- 5.2 The following section of this appeal sets out further detail to support the Appellant's Grounds of Appeal, which are based on the following key considerations:
- The rooftop of Waverley Market has an extensive history of being utilised for various entertainment and leisure uses, and a proposed plaza has been consented (18/02748/FUL) to allow such uses in perpetuity.
 - The rooftop level of Waverley Market has a long history of successfully accommodating similar temporary developments, and the principle of temporary attractions on the site is well established.
 - The Festival Village has operated on the rooftop of Waverley Market since 2017 and continued to improve its offer since that date, and has made a significant contribution to both the economy of Edinburgh and the vibrancy and vitality of the city centre.
 - The Festival Village operation has delivered a considerable number of economic benefits including employment opportunities across a range of sectors, including for trades people, security, bar and cleaning staff, as well as sound engineers and musicians. In 2021/22 the Festival Village created approximately 425 jobs. Closure of the Festival Village would result in the loss of these jobs.
 - The Festival Village helps to develop and support the infrastructure that sustains Edinburgh's cultural and creative sectors, as well as investing in artists and helping to sustain local artistic communities.
 - The Festival Village has now operated for a period of five years without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a variety of letters of support were provided in support of the submitted application for planning permission.
 - The development's impact on existing character and amenity would be limited by the temporary nature of the development and the Appellant would be content to agree to a shorter temporary period to further limit any impact.
 - The temporary nature of the development will not result in the permanent loss of open space.
 - The presence of on-site safety and security measures at the Festival Village has significantly reduced instances of anti-social behaviour associated with the rooftop.

RESPONSE TO REASONS FOR REFUSAL

- 5.3 We would note that all reasons for refusal include the phrase "*Over a continuous period of three years*" or "*over a period of three continuous years*". We would note that whilst the application form and accompanying documents suggested a temporary period of 3 years, the description of development does not specify a term.

The Appellant would therefore be content to agree to a shorter temporary period of 12 months if it were considered that a shorter period would help to mitigate the perceived harm set out in the reasons for refusal.

5.4 The reasons for refusal are addressed in detail below.

1. Over a continuous period of three years the proposal will have a detrimental impact on the character and appearance of the New and Old Town conservation areas and is therefore contrary to Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 6 (Conservation Areas - Development).

5.5 By virtue of the scale and temporary nature of the development proposed it is not considered that there would be a detrimental impact on the Conservation Areas. The Appellant would be content to agree to a shorter temporary period to mitigate this impact if required.

2. Over a continuous period of three years the proposal will have an adverse impact on the setting of a number of nearby listed buildings and is therefore contrary to Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and Local Development Plan Policy Env 3 (Listed Buildings - Setting).

5.6 By virtue of the scale and temporary nature of the development proposed it is not considered that there would be a detrimental impact on the setting of adjacent and nearby listed buildings. The Appellant would be content to agree to a shorter temporary period to mitigate this impact if required.

3. Over a continuous period of three years the proposal will have a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site contrary to Local Development Plan Policy Env 1 (World Heritage Sites).

5.7 By virtue of the scale and temporary nature of the development proposed it is not considered that there would be a detrimental impact on the Outstanding Universal Value of the Edinburgh World Heritage Site. The Appellant would be content to agree to a shorter temporary period to mitigate this impact if required.

4. Over a continuous period of three years the proposal does not represent a high quality design that safeguards the historic environment and is therefore contrary to Local Development Plan policies Del 2 (City Centre) and Ret 7 (Entertainment and Leisure Developments - Preferred Locations).

5.8 The Appellant has refined the Festival Village offering over its years of operation and it is considered that the submitted proposals enhance the attractiveness and vitality of the city centre further still. The Proposed Development is therefore considered to be acceptable in design terms in the context of a temporary development.

5.9 It is submitted that the Proposed Development is in accordance with the requirements of Policy Del 2 City Centre and First Policy and Policy Ret 7 Entertainment and Leisure Developments – Preferred Locations, when considered in the context of the planning history of the site and the temporary nature of the proposals.

5. The proposal is of a poor-quality design which is inappropriate over a period of three continuous years and damaging to the special character and appearance of the site and its surroundings. The proposal is therefore contrary to Local Development Plan policies Des 1 (Design Quality and Context) and Des 4 (Development Design - Impact on Setting).

- 5.10 The design and appearance of the Festival Village has been continually refined and developed since its opening in 2017, such that it is now considered to be a high-quality temporary solution for the site. This has included the use of fixed and retractable aluminium roofs, the reduction of the columns on site, the use of appropriate paint colours and fixings having regard to the character of the surrounding area and removing high level advertising. The height and form of the development has been designed to ensure that it can be integrated into the roofscape of Waverley Market whilst maximising a previously underutilised space.
- 5.11 As the success of the activity on the rooftop has increased, the Festival Village has contributed towards creating a sense of place in a key City Centre location. It is therefore submitted that the Proposed Development aligns with the requirements of Policy Des 1 and Policy Des 4 within the context of the temporary nature of the proposal.

6.0 CONCLUSIONS

- 6.1 This planning appeal must be determined in accordance with Section 25 of the Planning Act, which provides that the determination shall be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.2 We would emphasise that the proposal is a temporary use to support the economy to recover from the pandemic and the economic climate that now exists. The Applicant is actively pursuing interest for a permanent use on the roof and this application is an interim measure whilst negotiations progress.
- 6.3 The proposals will positively enhance the vitality and viability of the city centre and will contribute to Edinburgh's role as a capital city and regional shopping and business centre. The development will add to the mix of uses present within the city centre and will create a vibrant city centre attraction that will encourage activity throughout the day and into the evening. In addition, the development will be managed to ensure that there is no adverse impact on neighbouring amenity.
- 6.4 It is considered that the principle of development is in accordance with the development plan and by virtue of the scale and temporary nature of the development proposed, the proposals will not significantly harm the setting of neighbouring listed buildings, the character and setting of the New Town Conservation Area and World Heritage Site, as well as the designated area of open space.
- 6.5 The Appellant's overall conclusions and case can be summarised as follows:
- The rooftop of Waverley Market has an extensive history of being utilised for various entertainment and leisure uses, and a proposed plaza has been consented (18/02748/FUL) to allow such uses in perpetuity in the future.
 - The rooftop level of Waverley Market has a long history of successfully accommodating temporary developments, and the principle of temporary attractions on the site is well established.
 - The Festival Village has operated on the rooftop of Waverley Market since 2017, and has made a significant contribution to both the economy of Edinburgh and the vibrancy and vitality of the city centre.
 - The Festival Village operation has delivered a considerable number of economic benefits including employment opportunities across a range of sectors, including for trades people, security, bar and cleaning staff, as well as sound engineers and musicians. In 2021/22 the Festival Village created approximately 425 jobs. Closure of the Festival Village would result in the loss of these jobs.
 - The Festival Village helps to develop and support the infrastructure that sustains Edinburgh's cultural and creative sectors, as well as investing in artists and helping to sustain local artistic communities.
 - The Festival Village has now operated for a period of five years without receiving any complaints from neighbouring businesses or residents; in fact, there is now overwhelming support for the operation as it has matured and a variety of letters of support were provided in support of the submitted application for planning permission.
 - The development's impact on existing character and amenity would be limited by the temporary nature of the development and the Appellant would be content to agree to a shorter temporary period to further limit any impact.

- The temporary nature of the development will not result in the permanent loss of open space.
 - The presence of on-site safety and security measures at the Festival Village has significantly reduced instances of anti-social behaviour associated with the rooftop.
- 6.6 Whilst the application form and accompanying documents suggested a further temporary period of 3 years, the description of development does not specify a term. The Appellant would therefore be content to agree to a shorter temporary period of 12 months if it were considered that a shorter period would help to mitigate the perceived harm set out in the reasons for refusal. For all these reasons the Appellant respectfully requests that the appeal is upheld and planning permission is granted for a temporary period of 12 months.

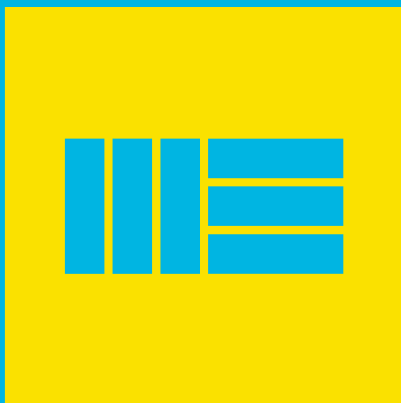
INDEX OF DOCUMENTS

Document Reference	Title	Prepared By	Date
ME01	Application Form	Montagu Evans	14 September 2022
ME02	Decision Notice	City of Edinburgh Council	09 December 2022
ME03	Report of Handling	City of Edinburgh Council	09 December 2022
ME04	Cover Letter	Montagu Evans	14 September 2022
ME05	Planning Statement	Montagu Evans	14 September 2022
ME06	Design Statement (Parts 1 & 2)	FourWard	September 2022
ME07	Design Check Report (Parts 1 - 5)	Goodson Associates	September 2022
ME08	Location Plan - drawing no. 031801-03-01	FourWard	08 September 2022
ME09	Existing Permanent Use - drawing no. 031801-03-02	FourWard	08 September 2022
ME10	Existing Temporary Uses - drawing no. 031801-03-03	FourWard	12 September 2022
ME11	Proposed Temporary Uses - drawing no. 031801-03-04	FourWard	12 September 2022
ME12	Management Statement	Montagu Evans	24 November 2022
ME13	Consultation Response - Network Rail	Network Rail	11 November 2022
ME14	Consultation Response - CEC Environmental Protection	CEC Environmental Protection	08 December 2022
ME15	Consultation Response - CEC Roads	CEC Roads	22 October 2022
ME16	Consultation Response - Edinburgh World Heritage	Edinburgh World Heritage	08 November 2022
ME17	Consultation Response - Historic Environment Scotland	Historic Environment Scotland	01 November 2022

ME18	Consultation Response - Police Scotland	Police Scotland	07 November 2022
ME19	Combined Public Consultation Comments	Various	Various
ME20	Edinburgh Local Development Plan	City of Edinburgh Council	01 November 2016
ME21	National Planning Framework 4: revised draft	Scottish Government	08 November 2022
ME22	Chief Planner Letter - 3 April 2020	Scottish Government	03 April 2020
ME23	Chief Planner Letter - 29 May 2020	Scottish Government	29 May 2020
ME24	Chief Planner Letter - 2 July 2020	Scottish Government	02 July 2020
ME25	Chief Planner Letter - 8 November 2021	Scottish Government	08 November 2021
ME26	Chief Planner Letter - 1 July 2022	Scottish Government	01 July 2022
ME27	Chief Planner Letter - 11 October 2022	Scottish Government	11 October 2022
ME28	Planning - permitted development rights review - phase 2: consultation	Scottish Government	11 May 2022
ME29	Circular 4/1998: The use of conditions in planning permissions	Scottish Government	27 February 1998

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WE CONSIDER OUR CREDENTIALS, HOW WE HAVE STRUCTURED OUR BID AND OUR PROPOSED CHARGING RATES TO BE COMMERCIALY SENSITIVE INFORMATION.
WE REQUEST THAT THESE BE TREATED AS CONFIDENTIAL.