



**OFFICE OF THE
DEPUTY PRIME MINISTER**

Review of Permitted Development Rights

September 2003

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in association with
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The views expressed in this report are those reached by the consultants and do not necessarily represent the views of Government.

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Executive summary

- 1 Permitted development rights are provided by the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) to allow certain types of development to proceed without the need for a planning application, since planning permission for them is deemed to be granted. Such rights have long played a role in reducing the number of planning applications for minor and uncontentious development and help reduce the regulatory burden of the planning system.
- 2 This study reports on research undertaken for the Office of the Deputy Prime Minister (ODPM) to review the GPDO and any issues and problems associated with the current operation of permitted development rights. Matters to be considered included how to make the GPDO clearer and more comprehensible, the need for greater consistency within it, how it could provide greater support for Government policy aims, the effectiveness of the Articles and the need for extending, or imposing more restrictions on, existing permitted development rights.
- 3 The study brief specifically excluded consideration of changes to the principles of permitted development rights for telecommunications, changes between Use Classes, temporary uses and satellite dishes, and no significant changes were sought to permitted development rights for householder development although anomalies, inconsistencies and any measures to reduce complexity could be addressed.
- 4 Wide consultation was involved in the study process covering all English local authorities and a range of other organisations using or affected by permitted development rights. This included a postal survey of 750 organisations and individuals, 60 structured interviews, and more detailed examination of case studies where permitted development rights had given rise to problems or where some scope was seen to extend permitted development rights.
- 5 Based on the consultation process and review of earlier research, the types of permitted development giving rise to most problems for both local authorities and affected parties are those related to dwelling-houses, telecommunications, agriculture, minor operations, temporary uses and changes of use. The main deficiencies and problems arising from the current GPDO were identified as:
 - difficulty of use and interpretation due to complexity of drafting and layout, lack of adequate or easily accessible definitions, and absence of User Guidance document;
 - inconsistencies between different categories of permitted development rights and the limitations applying to them;
 - anomalies in drafting which allow for abuses or unintended effects and the ability to carry out similar development under different parts;
 - inconsistency and lack of clear guidance on the operation of prior approval and other consultation procedures with local authorities;

- adverse impacts on the built and natural environment from inadequate controls on certain permitted development rights, particularly in sensitive landscape areas, conservation areas and more generally on streetscape;
 - the limited effectiveness and use by local authorities of Article 4 Directions to restrict permitted development rights; and
 - the failure of certain categories of permitted development rights to support Government policy aims.
- 6 While it is accepted that excluding minor and uncontentious development from full planning control offers clear benefits to the planning system, consideration was given to alternatives to the current system of permitted development rights. These ranged from removing such rights completely, to retaining the current GPDO system of permitted development but with comprehensive changes to improve it. The preferred approach was to build upon the current system of permitted development provided by the GPDO but subject this to comprehensive review. This decision reflected consultation responses, the nature of the problems identified, experience from similar reviews elsewhere and the risk that to move to a radically different system would introduce new problems and make worse a well-tried system that works reasonably well.
- 7 Consideration was given to how far permitted development rights encourage or hinder development consistent with Government policy aims, in which sustainability has emerged as the overriding theme. Other than for telecommunications, the GPDO has been updated only to a very limited extent to reflect these policy themes and in other areas provides variable and generally limited support for Government aims.
- 8 To make permitted development rights a more positive tool to encourage change in appropriate directions, a key element of this study's approach was that permitted development rights should promote development or environmental outcomes in tune with Government policy aims. However, different strands of Government policy can conflict with each other; development may sometimes contribute to certain aims and impact adversely on others. The overriding aim should therefore be for permitted development rights to be defined so as to help achieve an acceptable outcome, with a positive balance of policy aims, recognising that this may not always be easy to assess.
- 9 A consequence of seeking to secure better support in the GPDO for policy aims which have sustainability as an overriding theme may be a need for more restrictive permitted development rights, rather than any relaxation. It is important that imposing greater restrictions does not make the planning system less efficient and the GPDO more complex and consequently harder to understand than it currently is. A balanced approach is required, with any change to permitted development rights considered against these criteria:
- Is the change needed to deal with a widespread problem rather than an exceptional case? (However, even where a problem is not currently widespread, change may be justified by one or more of the other factors below).
 - Is the change justified by the strength of the impacts/concerns identified?

- Is it likely to bring about a real improvement in the operation of the planning system or in supporting policy aims?
 - Are the benefits acceptable in terms of other impacts on the planning system, including local authority workloads?
 - Is the change proposed the minimum needed to achieve the objective?
- 10 Taking account of these factors, the main areas of change to permitted development rights focused on:
- making the GPDO easier to use, understand and interpret;
 - providing increased control over development in the more sensitive open areas and built heritage;
 - controlling development that affects streetscape;
 - simplifying permitted development rights for householders while removing loopholes that cause problems and adverse effects on amenity;
 - measures to support local authorities in dealing with permitted development;
 - seeking to improve consistency but only where justified by circumstances; and
 - considering whether the limitations on some permitted development rights could be relaxed or whether such rights could be extended to other types of development.
- 11 On this basis, recommendations from the study identified some areas of the GPDO which appear to be operating adequately and causing few problems. For these, no significant changes, other than clearer interpretation and drafting, are needed. For other areas of the GPDO, relaxation of permitted development rights could take place and in others, further restrictions on current rights were considered appropriate. A number of general changes to apply across the GPDO as a whole were also identified. Some recommendations would involve changes to primary legislation. The main areas where changes are proposed are summarised below under these headings.

OVERVIEW OF CHANGES PROPOSED

- 12 To give a broad overview of the nature and balance of changes being proposed by this study, the study is not proposing major changes to a regime that appears to operate reasonably well. The main proposals involve improving ease of use and understanding of the GPDO through simpler drafting, clearer definitions and interpretation, revision of the prior approval procedure, amending the size thresholds for agricultural holdings, increased restrictions on the demolition of sports facilities and locally listed buildings and provision of a *'User Guidance'* document. Recommendations have aimed, as far as possible, to take account of future directions of Government policy and, for example, have addressed or made reference to the implications of higher density residential development, the removal of Crown Immunity and current proposals for revising permitted development rights for dwelling-house satellite dishes and antennas. The proposals involve relatively few changes to primary or other legislation.

- 13 The extent of relaxation of permitted development rights is limited by the lack of any clear case for including proposals suggested and is confined mainly to smaller scale works, although new rights are proposed for some additional types of development such as site investigations and minor waste management control facilities. However, increased size limits are proposed for health and university buildings and the removal of volume controls on extensions. Overall, while a reasonable balance has been sought, there is perhaps more tightening than relaxation of permitted development proposed, reflecting policy aims to give more protection to sensitive landscapes, heritage areas and streetscape, to deal with loopholes affecting air traffic safety, and to remove rights causing real harm. Several little used categories of permitted development are proposed for removal, to reduce the length of the GPDO.

GENERAL CHANGES

14 **Improve Interpretation and User Friendliness of the GPDO by:**

- redrafting as far as possible in a legally robust but simpler style, in the positive rather than the negative and avoiding use of double negatives (paragraph 39.3);
- making available a composite, up to date, version of the GPDO via the on-line Planning Portal (paragraph 39.6);
- providing adequate definitions or interpretation for all terms that have given rise to problems in the past, with key definitions to be repeated within the relevant Parts (paragraph 39.7);
- rationalising and deleting little used Parts e.g. delete Parts 26 and 30 and amalgamating Parts 14 and 15 (paragraph 39.9);
- making each Part as self-contained as possible, in terms of cross references and definitions;
- repeating, within each relevant Part of Schedule 2, any restriction applying under Article 3, or least under each Part make reference to any special restrictions imposed under other Articles (paragraph 39.12);
- providing a regularly updated '*User Guidance document*', covering all parts of the GPDO and available over the Planning Portal, to aid use of the GPDO and keep it up to date, including illustrated examples and flowcharts where appropriate and guidance on prior approval procedures and the meaning of '*development*' (paragraph 39.16); and
- retaining the existing separate guidance for householder development (paragraph 39.18).

15 **Sensitive Areas:**

- ensure restrictions that apply to National Parks apply equally to AONBs (paragraph 39.20);

- replace references to Article 1(5) and 1(6) land with references to specific types of areas where restrictions apply e.g. National Park (paragraph 39.21);
 - prior approval of siting and design should be extended, in a carefully targeted way, to more categories of permitted development to protect sensitive landscape and conservation areas, particularly in Parts 6, 9, 13, 29 and Class A of Part 17 (paragraph 39.22);
 - remove permitted development rights within Article 3 for works within SSSIs (paragraph 39.23);
 - require prior approval for permitted development works that involve significant disturbance of ground within limited areas of archaeological interest, in practice applying only to Scheduled Ancient Monuments (see paragraph 39.24); and
 - control demolition of means of enclosure and removal, without like-for-like replacement, of chimneys, porches, bay windows, roof materials within conservation areas.
- 16 **Works affecting Streetscape:** Make permitted development for works affecting streetscape conditional on this development causing no adverse impacts on streetscape and pedestrian flow, the extent of compliance being assessed against a new Street Management Code; amend primary legislation to define street repairs by statutory undertakers as development and permitted development rights for such work to be conditional on reinstatement to the original standard; require removal of redundant structures provided under permitted development (see paragraph 39.59).
- 17 Article 3: Repeat, within each relevant Part of Schedule 2, any restriction applying under Article 3, or least make reference under each Part to any special restrictions imposed under other Articles (paragraph 39.37).
- 18 **Article 4 Directions:** Improve the effectiveness of these Directions by removing the right to compensation where planning permission is refused after permitted development rights are withdrawn; by providing best practice guidance on preparation of Article 4 Directions and restricting through the GPDO the permitted development rights most commonly removed by these Directions, allowing local relaxation through local development orders. Consider also introducing a new type of Article 4 Direction to allow rapid action without the need for approval by the Secretary of State, for example of rural leisure plots (see paragraph 39.32).
- 19 **Rural Leisure Plots:** remove within Article 3 the permitted development rights under at least Parts 2, 4, 5, 6 and 9 with respect to *'previously undeveloped land or undeveloped land that was formerly (but no longer) part of an agricultural holding or in agricultural use'*. Consider also introducing a new type of Article 4 Direction to address this issue without the need for approval by the Secretary of State (see paragraph 39.40).
- 20 **Prior approval procedure:** this procedure should be amended to provide fixed, longer periods within which local authorities must respond, require all details on siting, design and materials to be submitted at the start of the notification period; allow for public consultation on the prior approval details; increase the fee to a

level equivalent to that for a planning application; provide clear guidance on the prior approval procedure in a User Guidance document, including what conditions can be applied and scope for amendment (see paragraph 39.50).

- 21 **Airport safeguarding:** Changes are proposed to assist airport safeguarding by:
- requiring prior notification to planning authorities and airports of any proposed development exceeding certain height limits within a specified distance from an aerodrome boundary, and removing permitted development rights for development that exceeds relevant height limits in the aerodrome safeguarding plan; further research is recommended to identify appropriate limits (see paragraph 39.45);
 - restricting permitted development rights across all relevant Parts for development that would lead to more people living, working or congregating within Public Safety Zones (see paragraph 39.49).
- 22 **Redundant development:** Add to Article 3 a general requirement to remove redundant buildings, equipment and structures provided under permitted development rights particularly those affecting streetscape (see paragraph 39.38).
- 23 **Confirmation of Permitted Development:** The GPDO User Guidance document should advise on best practice for local authorities to deal with such requests for written confirmation that permitted development rights apply to a particular situation. The recommended approach would be to require an application for a Certificate of Lawfulness for the development (CLOPUD or CLEUD), or a simplified version of this with a reduced flat rate fee which reflects the average amount of Council officer work involved (see paragraph 39.67).

WIDENING OF PERMITTED DEVELOPMENT RIGHTS

- 24 The main areas where relaxation or widening of existing permitted development rights is considered appropriate include:
- **Schools:** provide separate permitted development rights for school development with a higher building size limit (250 m³) than in Part 12 (paragraphs 16.11 and 36.10);
 - **Universities, Colleges and Hospitals:** increase size limit on extensions or new buildings from 250 to 1,000 m³ (or a floorspace equivalent) except within conservation areas (paragraph 36.15);
 - **Industrial and Warehouse development:** clarify that the restriction of no material effect of extensions on external appearance applies to the site as a whole, not individual buildings and consider removing this restriction outside conservation areas and where premises do not front a highway; consider removing volume control on extensions and rely only on a percentage increase of floorspace and not exceeding existing building height (see paragraph 12.12);
 - **Sewerage Undertakers:** allow 'kiosk' buildings under 29 m³ to house control equipment for sewerage undertakers (see paragraph 20.14);

- **CCTV:** allow pole mounted cameras within sites where not within 20 metres of the curtilage boundary (see paragraph 37.16);
- **Householder development:** control extensions to dwellings by floorspace and distance from the curtilage, rather than by volume; this would not change overall size thresholds, only calculate them differently (see paragraph 5.29);
- **Environment Agency/Drainage Bodies:** clarify that improvement includes widening of banks of a watercourse within specified limits (see paragraphs 18.9, 19.12);
- **Caravans:** amend the reference to construction and engineering sites to include caravans used by construction workers on any compound relating to pipeline works (see paragraph 9.13);
- **Railway undertakers:** clarify that permitted development rights extend to lessees such as train and freight operating companies (see paragraph 21.22);
- **Eligibility:** to avoid uncertainty, clarify in appropriate parts that permitted development rights can be exercised by those acting on behalf of the relevant undertaker (paragraph 39.14); and
- **New Categories:** consider providing permitted development rights for some additional categories: minor works required for waste management, such as venting wells and development; development within specified limits within military sites to allow for any future removal of the Crown's exemption from planning control; various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions (see Chapter 38).

PERMITTED DEVELOPMENT WHERE ADDITIONAL RESTRICTIONS ARE PROPOSED

25 The main areas where tighter restrictions on existing permitted development rights are considered justified by adverse impacts or conflict with Government policy aims include:

- **Householder development:** a range of changes to remove anomalies and adverse impacts are proposed including (see Chapter 10):
 - controlling permitted development rights for new buildings/extensions where unimplemented planning permissions exist;
 - additional controls on alterations/extensions within sensitive areas;
 - restrictions on removal without like-for-like replacement of bay windows, porches and chimneys in conservation areas;
 - requiring compliance in conservation areas with a national '*Conservation Area Management Code*' adopted by the local planning authority;

- reducing the proportion of the curtilage which can be covered by buildings from 50% to 25%;
 - requiring matching materials to the original dwelling-house;
 - requiring height of new buildings within 2 metres of a boundary to be measured from the lower land level where differences exist in land level between two sites;
 - new buildings etc. under Class E to be at least 3 metres from an adjoining dwelling-house;
 - limiting or requiring non-opening translucent windows for any new windows in return frontages within a specified angle and distance where they overlook windows in a neighbouring property;
 - making permitted development rights consistent with Building Regulations; and
 - restricting development that directly abuts a party wall.
- **Minor Operations:** impose restrictions on materials used to form means of enclosures, so as to require *‘conventional/traditional’* materials and so as to exclude use of waste materials; limit the length of a means of access and permit only a temporary means of access to serve a temporary use; ensure that railings on roof terraces/gardens/decking fall within Part 1; restrict painting of buildings in conservation areas and where a building is listed (see paragraph 6.7);
 - **Caravans:** removal of permitted development rights in sensitive areas; limit the numbers of caravans involved in meetings and activities by exempted organisations; impose a limit to the total number of meetings of less than 5 days that can occur in any year on one holding (see paragraph 9.11);
 - **Agricultural Development:** create a separate Class for certain, possibly intensive agricultural uses on smaller landholdings e.g. of up to 20 ha., and otherwise abolish permitted development rights on holdings e.g. of up to 20 ha.; change the prior approval procedure; exclude the importation of waste (see paragraph 10.21);
 - **Forestry Development:** in sensitive areas, apply a similar size restriction on forestry buildings (465 m²) to Part 6 and clarify that forestry visitor centres need planning permission (see paragraph 11.13);
 - **Repairs to Services:** Apply a condition to require land to be reinstated, once works have been completed, to its original condition or as agreed with the local authority (see paragraph 14.6);
 - **Development by Local Authorities:** Remove school development from Part 12; clarify that floodlighting and new car parks are specifically excluded from Part 12 rights (see paragraph 16.11);

- **Development by Local Highway Authorities:** consider defining works within the highway as *'development'* in primary legislation, but then making such works permitted development in the GPDO subject to a condition of having no adverse impact on streetscape or on pedestrian flow, with this being assessed with reference to the Street Management Code applying to the area (see paragraph 17.12). If highway works are redefined as *'development'* and made permitted development under Part 13, prior approval should be required on siting, design of highway works in National Parks and AONBs that are likely to have material effects (see paragraph 17.18);
- **Development by Railway Undertakers:** set a height limit of 15 metres on telecommunications masts permitted in sensitive areas, with prior approval required in respect of siting and design of all masts; for consistency, a similar restriction is proposed under Part 11 also (see paragraph 21.29);
- **Development ancillary to mining operations:** remove permitted development rights for asphalt coating plants; provide specific time limit for mineral authorities to respond to prior notification (see paragraph 23.10);
- **Driver Information Systems:** Require prior approval procedure on design of masts within sensitive areas such as National Parks, AONBs and conservation areas (see paragraph 33.6);
- **Demolition:** impose full planning control over demolition of locally listed buildings and sports facilities; remove right to demolish walls, fences and other means of enclosure in conservation areas (see paragraph 35.12);
- **CCTV:** subject to technological feasibility, consider reducing size limits for cameras (see paragraph 37.8);
- **Delete little used rights:** subject to consultation, remove the permitted development rights for Toll Road Facilities and for the Historic Buildings Commission, which appear to be little used (Chapters 30, 34).

CHANGES INVOLVING PRIMARY OR OTHER LEGISLATION

26 The following, possibly longer term, recommendations would involve changes to primary legislation or other legislation other than the GPDO:

- remove the entitlement to compensation when permitted development rights are removed through Article 4 Directions (see paragraph 39.35);
- redefine the definition of development in Section 55 of the Town and Country Planning Act to include works within the highway by statutory undertakers and local highway authorities (see paragraph 17.15); and
- amend the Town and Country Planning (Demolition – Description of Buildings) Direction 1995 to include locally listed buildings and front garden walls outside conservation areas within the definition of development and enhance the status of local list of buildings (see paragraph 35.12).

AREAS FOR FURTHER INVESTIGATION

- 27 The following areas need further investigation before changes are considered:
- to establish appropriate size limits for permitted development in airport safeguarding areas (see paragraph 39.45);
 - the effects or abuse of certain agricultural permitted development rights and the prior notification procedure, and the minimum size of agricultural holding which can be viably operated (see paragraph 10.31);
 - the need to control demolition of front garden walls outside conservation areas (paragraph 35.21); and
 - the need for restrictions/notifications to the Environment Agency of permitted development rights within areas liable to flood (see paragraph 39.25).
- 28 These changes are intended to provide an appropriate balance between supporting Government policy aims, the regulatory burden on users of these rights and the efficiency of the planning system.

CHAPTER 1

Introduction

- 1.1 Permitted development rights are provided by the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) to allow certain types of development to proceed without the need for a planning application, since planning permission for them is deemed to be granted. Such rights have long played a role in reducing the number of planning applications for minor development to be dealt with by local authorities and reducing the regulatory burden of the planning system for many users.
- 1.2 The December 2001 Government Green Paper, *Planning: delivering a fundamental change*, identified the need to improve the speed and predictability of the planning system and to update the GPDO. It also acknowledged that the GPDO was widely regarded as difficult to understand and that the aim was to make it more comprehensible.
- 1.3 This study reports on research undertaken, on behalf of the Office of the Deputy Prime Minister (ODPM), to review the GPDO and any issues and problems associated with the current operation of permitted development rights. The study has been carried out by development planning consultants Nathaniel Lichfield and Partners Ltd. (NLP), in association with solicitors SJ Berwin.

OBJECTIVES OF THE STUDY

- 1.4 The specific aims of the research, as identified in the study brief, are to:
 - a. evaluate the impact, effect and effectiveness of the GPDO regime;
 - b. assess the existing permitted development rights to see if they are in line with current Government policy and up to date in their expression;
 - c. consider whether any additional permitted development rights should be introduced or existing rights removed;
 - d. consider whether any additional conditions, qualifications or restrictions should be introduced;
 - e. consider whether there is a need for greater consistency across the GPDO;
 - f. consider how the GPDO provisions, including the Articles, could be made clearer and more comprehensible;

- g. consider the operation of the Articles to see if they are fully effective; and
 - h. consider whether any changes are needed to primary legislation to facilitate changes to the GPDO.
- 1.5 Within that context, the study was not intended to consider changes to the principles applying to permitted development rights for telecommunications (Part 24 of the GPDO), which had been reviewed recently after extensive consultation. A similar situation applied to changes between Use Classes (Part 3), temporary uses (Part 4) and satellite dishes. The brief also made clear that no significant change was to be considered to permitted development rights for householder development (Part 1 of the GPDO), reflecting the view expressed in the Planning Green Paper that any relaxation of such rights could have real impacts on neighbouring properties. However, for all these types of permitted development, any inconsistencies, anomalies and areas of the GPDO where drafting and definitions needed improvement, were to be identified.

APPROACH

- 1.6 The research study process involved the following stages:
- A review of previous research and literature on permitted development issues and case law.
 - A review of relevant legislation, Government planning guidance and policy statements, and related public consultation responses on such documents; this included the GPDOs for both Scotland and for England and Wales.
 - A postal survey of a wide range of organisations using or affected by permitted development rights, including all 430 English local authorities, and a number of education and health authorities, statutory undertakers, developers, planning consultants, industrial firms, airports, transport bodies, various environmental and conservation interest groups, trade associations and representative organisations in the property, design and planning fields.
 - Structured interviews with over 60 representatives from the groups above.
 - More detailed examination of specific case studies to ascertain whether the effects of permitted development rights support the case for changing certain parts of the GPDO, the implications of these changes and the likely costs and benefits arising from the changes proposed.
 - Discussions with a panel (known as the Sounding Board) representing regulators and users of permitted development rights and other affected parties.

REPORT STRUCTURE

1.7 The report is structured as follows:

- Chapter 2 summarises the role of permitted development rights within the planning system, and examines how these have evolved over time to reflect changing development and policy aims. The relationship of the GPDO to current Government policy aims and the extent to which it supports these aims is also considered.
- Chapter 3 identifies the main issues applying to the GPDO and permitted development rights, as identified by the review of literature, case law and consultation responses.
- Chapter 4 examines the pressures for change to the GPDO, defines the principles which should apply when considering any revisions and discusses alternatives to the current system of permitted development rights.
- Chapters 5-37 consider in detail the operation of existing permitted development rights and other elements of the GPDO. For each category of permitted development in Schedule 2, issues and concerns identified by the consultation process are summarised, along with any identified anomalies and inconsistencies. The potential for change and likely impacts of possible changes are also examined.
- Chapter 38 examines the case for extending permitted development rights to additional categories.
- Chapter 39 considers the potential for general changes to the GPDO as a whole, rather than to individual parts of it.
- Chapter 40 sets out the consultants' overall conclusions and a summary of recommendations.

1.8 The report is supported by Annexes containing a literature review, the findings of the survey of local planning authorities and of users of permitted development, a summary of relevant Government policy aims and details of the case studies examined.

CHAPTER 2

Permitted development rights within the planning system

- 2.1 Permitted development rights provided by the GPDO grant planning permission for certain categories of development without the need to submit a planning application. For the most part, these categories relate to relatively minor forms of development which do not usually have significant impacts and which would generally have received planning permission if an application had been needed.
- 2.2 Since they were first introduced prior to the 1947 Town and Country Planning Act, which provided the basis for modern planning control, General Development Orders have been subject to frequent review and amendment to reflect, for example, changes in environmental legislation or in the nature of development and economic activity.

SCOPE OF PERMITTED DEVELOPMENT RIGHTS

- 2.3 The current GPDO is divided into 33 parts, which relate to broad categories of permitted development. These in turn contain a total of 84 more detailed classes of development. The types of development now subject to permitted development rights can be broadly summarised as:
- those relating to certain types of building, including dwelling-houses, industrial and warehouse buildings, agricultural buildings and those within amusement parks; these rights mostly relate to fairly minor development incidental to existing uses of the land and with any adverse effects controlled by various conditions attached;
 - those given to certain types of organisations which carry out development, including local authorities, highway authorities, various statutory undertakers e.g. railways, electricity, ports, water authorities, airports and telecommunications operators; it is understood these rights were originally provided because of the essential public services provided by these bodies and the statutory controls and accountability that apply to them; and
 - rights that tie in with and provide limited expansion of development rights provided by other legislation, such as repairs to services and unadopted roads, which extend the scope of development defined by Section 55 of the Town and Country Planning Act 1990.
- 2.4 While the basic aim of permitted development rights is to exclude relatively minor development proposals from planning controls, the need to control any significant impact of even minor development in protected or sensitive environments means that the GPDO provides for some permitted development rights to be withdrawn or limited in certain circumstances, as follows:

- in conservation areas, and certain other specified or designated areas such as National Parks and Areas of Outstanding Natural Beauty (AONB);
- by conditions, exclusions and limitations applying to specific rights;
- through Articles in the GPDO, including Article 4 which gives local authorities powers to remove permitted development rights, and Article 3 which removes permitted development rights for most forms of development if EIA is required;
- prior approval procedures, which require information on siting, design and scale of certain categories of permitted development to be provided to the local authority, with a decision required within a specified period, failing which permission is deemed to be given; and

2.5 In addition, permitted development rights can be removed outside the GPDO through conditions attached to a planning permission.

IMPORTANCE TO THE PLANNING SYSTEM

2.6 Permitted development rights are a long-standing part of the development control system. Some benefits attributed to them include:

- reducing the need for developers/operators to seek planning permission for minor development;
- reducing the number of planning applications made to local authorities, so allowing them to concentrate on larger development proposals which may have greater impacts on the environment and amenity; and
- generally helping improve efficiency in the planning system.

2.7 However, the large numbers of enquiries to local planning authorities arising from interpretation difficulties or due to the need for formal confirmation that permitted development rights apply, have also been cited as offsetting any reduction in local authorities' workload, which would otherwise be the case as a result of fewer planning applications being required. Some authorities receive up to 3,000 such queries annually.

2.8 Permitted development rights are also important within the planning system since they provide a *'fall-back'* position for certain types of development. Based on appeal decisions and case law, this makes it harder to refuse planning applications where the developer is able to carry out slightly smaller works, under permitted development rights, than may be proposed in the application.

2.9 The GPDO remains a key tool of the planning system, and is one of the documents most frequently referred to in the development control process. But the large number of categories of permitted development it contains, each with different limitations, the accumulation of amendments in a piecemeal way over time, and an overly complex form of drafting have combined to produce a document which is often difficult to interpret.

EMERGING PLANNING LEGISLATION

- 2.10 In the Planning Green Paper, published in December 2001, permitted development rights were seen as important in helping reduce the regulatory burden on the planning system. This Paper aimed to speed up development control decisions, reduce complexity and constraints in the development process, and increase predictability while making the system more efficient and with better enforcement against non-compliance. It also recognised that the GPDO is regarded as difficult to understand and that this leads to time consuming queries about whether particular development requires planning permission.
- 2.11 While the Government's stated aim was to update the GPDO and make it more comprehensible, no significant change in the national regime for permitted development rights was proposed. By way of its December 2002 Planning and Compulsory Purchase Bill, the Government subsequently announced its intention to introduce Local Development Orders allowing local authorities to relax nationally-set permitted development rights locally, where supported by policies in an adopted development plan.

RELATIONSHIP TO GOVERNMENT POLICY

- 2.12 It may be argued that since permitted development rights relate to relatively minor development in most cases, they have limited ability to contribute greatly to Government policy aims. Nevertheless, it is important that permitted development rights should, as far as possible, be consistent with policy, avoid hindering its implementation and encourage development that accords with policy aims. An assessment of the level of support of the current permitted development rights for policy aims is provided in Tables 1-35 and discussed briefly below.
- 2.13 Government policy guidance and advice have been developing consistently since the early 1990s, when sustainable development started to become the overriding theme across all policy fields. The main strands of current Government policy within this sustainability context are set out in Annexe 2 and include:
- economic competitiveness;
 - social inclusion and community involvement;
 - integrated transport, reduced private car use, and improved public transport;
 - urban regeneration;
 - use of brownfield land in preference to undeveloped land;
 - the promotion of higher density residential development;
 - protection of the countryside while encouraging rural regeneration and farm diversification;
 - protection of the built heritage/historic landscape;

- providing modern telecommunications infrastructure;
- ensuring secure, diverse and sustainable supplies of energy at competitive prices;
- ensuring an adequate supply of minerals in a sustainable way;
- improved air quality;
- good design;
- sustainable communities; and
- achieving Best Value.

2.14 Specific policy objectives of the Office of the Deputy Prime Minister and other relevant Government departments include:

- raising levels of social inclusion, neighbourhood renewal and regional prosperity (ODPM);
- providing for effective devolved decision-making within a framework of national targets (ODPM);
- helping raise the quality of life for urban areas and other communities (ODPM);
- achieving a better balance of housing availability and demand while protecting valuable countryside around towns, cities and in the Green Belt (ODPM);
- to protect and improve the rural, urban, marine and global environment (DEFRA);
- to enhance opportunity and tackle social exclusion in rural areas (DEFRA);
- to promote sustainable, diverse, modern and adaptable farming (DEFRA);
- to encourage high standards of design quality in the built environment (DCMS);
- to conserve and enhance the historic built environment (DCMS);
- to encourage and help the tourism industry to maximise its potential and promote a positive image of the UK (DCMS);
- to generate wealth for everyone in the UK by helping people and businesses to become more productive and successful (DTI); and
- to develop a sustainable modern transport system to tackle the problems of congestion and pollution (DfT).

2.15 The policy themes of urban regeneration, integrated transport, community involvement and promoting good design have only been developed in more recent years, while the stance of protecting the countryside for agricultural purposes and for its own sake has radically shifted since the early 1990s to one of promoting rural regeneration and farm diversification while protecting specially designated areas. The GPDO has

been updated only to a very limited extent to reflect these developing and changing policy themes, mainly with respect to Government policy on telecommunications, where this has been required by a rapidly developing and changing industry.

- 2.16 Elsewhere, the GPDO provides variable and generally limited support for Government aims. For example, the provisions in Part 6 permitting certain agricultural operations and buildings reflect Government support for the farming industry. The prior approval procedure allows some influence on design quality by the local planning authority. However, since this Part only applies to development for agricultural purposes it does nothing to aid rural diversification; possible changes to Part 3 of the GPDO may, however, be of benefit to this aim.
- 2.17 For other parts of the GPDO, Government policy advice plays little or no part in the development rights permitted. For example, development allowed within the curtilage of a dwelling-house under Part 1 need pay no regard to Government advice on design quality or on conservation of the built heritage. In addition, the floorspace limitations for Part 8, industrial and warehouse development, are set so low that the scale of development permitted for the expansion of businesses is too small to allow any great contribution to economic prosperity to be achieved.
- 2.18 The extensive new operational buildings allowed on airports under Part 18 permitted development rights could be regarded as supporting UK economic competitiveness and transport aims, although the only real control aimed at protecting the environment – the need for EIA in some cases – may not always be effective for all scales of development.
- 2.19 With regard to the historic environment, controls over the demolition have been affected by the 1997 House of Lords ruling in *Shimizu (UK) Ltd. v Westminster City Council* which held that ‘*demolition*’ of unlisted buildings within conservation areas means the removal of the whole building or a substantial part of the building. The Government has consulted on, but never implemented, proposed amendments to address this issue. Similarly, consultation proposals on requiring permission for the demolition of sports buildings have not yet been taken forward.
- 2.20 While protection of the countryside is a key policy aim, the GPDO permits a range of sizeable structures by statutory undertakers and highway authorities with variable levels of protection to the more sensitive areas. Similarly, few restrictions apply to permitted development in nature conservation areas to support biodiversity aims.
- 2.21 The policy theme of promoting community involvement in decision-making at local area level could be argued to run counter to permitted development rights which can be implemented without any consultation.
- 2.22 It is also noticeable that, although control of waste management and recycling is an important element of Government policy, there are very few specific permitted development rights applying to waste operations in the GPDO, apart from Part 12, and in Part 21 which relates only to waste tipping at mines.
- 2.23 It is apparent that while certain permitted development rights support some Government policy aims, they can also conflict with other aims, and a compromise between these often has to be accepted. For example, high masts support modern telecommunications infrastructure but can have adverse visual effects on the countryside.

It is in any event difficult to relate the 1995 GPDO to current Government policy directly, as many of the relevant PPGs do not yet adequately express and interpret the more general statements and objectives set out in White Papers, Strategies and more up to date best practice guidance. Much of the earlier guidance is still relevant and set out in PPGs, (e.g. in PPG7 for agricultural buildings). However, guidance on a number of specific design issues is not so readily accessible, such as that relating to statutory undertakers carrying out works affecting the streetscape.

- 2.24 From the above review, a case can be made that permitted development rights should only be given to development which is marginal and incidental to existing uses of land. However, if these rights are extended or have current limitations relaxed to relate to more significant development, they should be defined to more closely relate to Government policy aims, balancing different elements of policy where necessary. Such considerations need to be taken into account when current rights are reviewed.

CHAPTER 3

Issues and problems

- 3.1 The GPDO and the current operation of permitted development rights give rise to a number of problems and concerns, which have been identified from:
- a review of previous research on permitted development rights and related procedures, case law and other relevant studies;
 - responses from the questionnaire survey and structured interviews with planning authorities, users of permitted development rights and other interested parties (see Annexes 3 and 4; and
 - responses to recent consultation exercises on Government planning policy documents and proposed changes to legislation.

REVIEW OF LITERATURE

- 3.2 Some of these problems have been identified in earlier, mainly Government commissioned, studies that have directly examined the operation and effects of permitted development in England and Wales. These covered the use of Article 4 Directions (1995), planning controls over agriculture and forestry development (1995), the permitted development rights of statutory undertakers (1997) and the Use Classes Order and Part 4 of the GPDO (2001). Studies by other organisations have also considered the effects of permitted development rights when investigating other issues (e.g. conservation and streetscape). This earlier research is summarised in Annexe 5 with key findings drawn out within relevant sections of this report.
- 3.3 The only recent general review of permitted development rights is that carried out for the General Permitted Development Order in Scotland in 1998.¹ This found a general difficulty of understanding and interpreting the Order and a need to improve user-friendliness. No scope was seen by any of the key stakeholders for further extension of permitted development rights but there was potential to rationalise the classes of development within the curtilage of a dwelling-house, with fewer classes of development. A number of anomalies were noted between different classes and there was a general problem of interpreting and understanding prior-notification procedures. Rationalisation and redrafting in a simpler format were therefore proposed, with a reworded Part 1 being put forward. These recommendations have not, however, been taken forward by the Scottish Executive, due to other priorities for secondary legislation (e.g. in relation to telecommunications). Those parts of the Scottish GPDO which were subject to review and not found in need of any change can be considered to operate reasonably well.

¹ Research on the General Permitted Development Order and Related Mechanisms, Scottish Office, 1998.

- 3.4 Other general issues were identified from reports of development control problems involving permitted development rights in professional journals. These highlighted problems of definitions and interpretation arising partly from the complexity of drafting of the GPDO. These cases also confirmed that most problems arise with permitted development rights related to householder, telecommunications and agricultural development, and that the visual impacts of works by statutory undertakers, telecommunications operators and other users of permitted development rights were problematic. A review of appeal decisions and other case law involving permitted development rights further emphasised that many difficulties arise from interpreting parts of the GPDO and the lack of clear definitions.
- 3.5 Drawing on the earlier research as well as consultation responses to the current study, the types of general problems and issues associated with the 1995 GPDO are described below.

EASE OF USE AND INTERPRETATION

- 3.6 Difficulties in using or interpreting the GPDO were identified through the consultation process as the document's major drawback. Some 50% of responding local authorities and 22% of users and other organisations considered the GPDO 'very' or 'generally difficult' to understand and interpret and all local authorities reported some problems in this regard. These concerns stemmed from factors such as layout of the document, the style of drafting, and the adequacy of definitions and interpretations provided, with the most commonly sought changes in this regard being:
- simplification and use of plain English;
 - clarification and better definition of terms;
 - improved format/layout;
 - less use of negatives, especially double negatives;
 - an overall reduction in length;
 - avoiding the need to cross refer to other legislation; and
 - providing an improved User Guidance document or a Circular.
- 3.7 Definitions of terms used within the GPDO generally are provided within Article 1 while interpretations of other terms are found in the Part to which they specifically relate; this can mean that several places have to be looked at when interpretation is sought. In some cases, definitions are provided only by reference to other legislation and not specified in the GPDO itself. Some commonly used terms (e.g. *'highway'*) are not defined at all, while other definitions are unhelpful e.g. *'plant'* is defined as including any structure or erection in the nature of plant. A significant number of problems with permitted development rights arise over disputes on interpretation of terms; although a term may have been clarified by case law or legal opinion, the lack of easy access by users to such clarification perpetuates the problem.

- 3.8 Problems related to definitions were raised by 55% of responding local authorities although only 2-3% of users/interest groups had difficulties in this regard. Suggested improvements included clarifying the terms used in the GPDO to reduce the scope for different interpretations, and providing a list of all definitions in one place, without having to cross refer to other parts of the GPDO or other legislation. Terms for which better definitions/interpretations were sought are listed in Annexe 9.

INCONSISTENCIES

- 3.9 Permitted development rights are awarded or specified differently in different parts of the GPDO without obvious reasons for variations. Examples include:
- Parts 12-15 give rights only to a specified user body while Part 18 allows *'relevant airport operators or their agents of development'* to carry out works on an airport, Part 16 allows development *'by or on behalf of'* a sewerage undertaker and Part 17 B gives rights to statutory undertakers and their lessees. Some Parts have no restriction on who may use the rights;
 - a number of different terms are used to describe what permitted development rights can be used for; in Part 15 the Environment Agency can use permitted development rights *'for its functions'* while in Part 17 the phrase *'for the purpose of their undertaking'* is commonly used; and
 - a small control building under 29 m³ is allowed under Part 17 Class E (water and hydraulic power) but not under Part 16 (sewerage undertakers), although these undertakings have broadly similar functions.

OVERLAPS BETWEEN PARTS

- 3.10 For some types of development, the GPDO gives a choice of using permitted development rights under different Parts, allowing the user to make use of those which are least restrictive in a particular situation. While this can provide flexibility for users, it can lead to perceptions of loopholes being exploited to circumvent planning controls. Examples include:
- school extensions can be developed under Part 12 or Part 32;
 - a fence can be erected by a local authority under Part 2, or Part 12 with different height limits applying; and
 - railway undertakers can carry out certain works under Part 17 (Class A) or under Part 11, where Acts of Parliament or Parliamentary Orders specifically authorise that development.

LIMITATIONS

- 3.11 As summarised in Annexe 6, differing size limitations apply within different Parts of the GPDO, with the reason for the difference not always clear:

- an extension to a school is limited to 200 m³ under Part 12 but 250 m³ is allowed under Part 32 (subject to other constraints);
- telecommunications masts are limited to 15 metres high under Part 24 but no limit applies to such masts erected by a railway undertaker under Part 17; and
- development within industrial sites is restricted within 5 m of the site boundary while school development in Part 32 must be at least 20 m from the boundary.

3.12 In addition, a frequently raised issue is that permitted development rights for building extensions, particularly under Part 1, are controlled by a volume limit in relation to the original building. Calculating the volume of the original building can be difficult and time consuming for complex sites and buildings that have been frequently altered in the past.

ANOMALIES AND LOOPHOLES

3.13 A significant number of anomalies or lack of clear definitions can be identified within specific Parts of the GPDO which give scope for unintended consequences or abuses. Examples include:

- under Part 1, a building up to 4 metres high can be erected on a boundary wall while Part 2 limits any wall/fence in that location to 2 metres; this has potential for adverse effects on neighbours;
- permitted development can proceed along with development authorised by outstanding planning permissions, resulting in very large residential extensions and site coverage that would not otherwise have been allowed; and
- Part 13 potentially allows for a new carriageway to be added to a road unless it so extensive that EIA is required.

SUPPORT FOR GOVERNMENT POLICY AIMS

3.14 Some 68% of local authorities and 60% of users/interest groups, who expressed a definite view on this issue, considered current permitted development rights were inconsistent with or hindered delivery of Government policy aims in some way. The most frequently given examples were adverse effects of permitted development on design quality, on protecting the built environment/streetscape and the natural environment generally and their complexity slowing down the planning system. Other concerns were that the GPDO leads to adverse impacts on Green Belts and prevents authorities from securing more sustainable forms of development.

3.15 The most commonly identified benefits of permitted development rights were seen as the greater certainty they provide to users and their perceived role in speeding up planning decisions and reducing pressures on the planning system. However, significant numbers felt that permitted development rights do not reduce local authority workloads, with one authority pointing to over 1,000 enquiries a year seeking clarification or written confirmation that permitted development rights apply to specific proposals.

GUIDANCE FOR USERS

- 3.16 From the consultation responses, 66% of local authorities considered that current guidance was inadequate in helping interpret the GPDO. Overall, the GPDO was seen as complex and overly legalistic in its wording and interpretation of it was a major difficulty. The constantly changing, often conflicting messages from case law limit the usefulness of other sources and there was a need for a single point of reference to give clearer guidance to users. For users/interest groups, the Encyclopaedia of Planning Law and legal advice were mainly relied upon and these were considered adequate by the majority responding. Circular 9/95, potentially the most relevant guidance, was rarely used by either group, some not being aware of it, and those who were finding that it did not contain enough information to help clarify or resolve problems with permitted development rights.
- 3.17 The main need identified was for better guidance on permitted development rights for users, including examples, illustrations, flowcharts and references to case law where appropriate. No respondent suggested that simpler drafting of the GPDO itself would completely avoid the need for a User Guidance document and the types of additional information sought were ones which would not normally appear in a statutory document.

CONSULTATION PROCEDURES

- 3.18 Different consultation procedures apply in different parts of the GPDO. Under Part 18, airport operators are required only to '*consult*' local authorities on certain operational development but no time limit is specified, or scope for refusal is indicated. Under Parts 6, 7, 24, 25, 30 and 31, prior approval procedures apply with varying time limits. Under Parts 11, 17, 19 and 20, prior approval is required but no time limit is set for a response by the local planning authority.
- 3.19 From the consultation process, prior approval procedures are poorly regarded by local authorities, over 80% of those expressing a view wishing them altered, the majority seeking complete removal, with prior approval for agriculture and telecommunications development the most problematic areas. However, despite the low level of responses from users/interest groups on this issue, the balance was in favour of retention of prior approval due to the greater certainty it offers. The main concerns on these procedures were:
- a. the difficulty in explaining to the public that the local authority can control only the details and not the principle of the development;
 - b. the difficulty of responding within the specified timescale when public consultation is carried out and objections made; often at the instigation of elected members, some authorities appear to treat this process the same as a planning application and undertake public consultation although this is not required other than for Part 24; and
 - c. when no time limits are specified, there can be lengthy delays in obtaining local authority responses.

- 3.20 The current lack of any clear guidance on the operation and limitations of prior approval procedures, to promote a standard approach by different authorities, was a particular area of concern. There was also uncertainty on whether conditions could be applied and what kind of conditions are possible.

ARTICLE 4

- 3.21 There were a number of concerns on the operation of Article 4 Directions. Some 41% of local authorities felt they worked adequately, 34% that they did not and 25% indicated they did not know. A total of 24% of authorities had issued no such Directions and a further 16% only one. Many authorities had issued some Directions many years ago but not updated them to reflect current problems. The main deterrents identified to wider use were the high staff and time resources required, the complexity of the procedures, the requirement to obtain Secretary of State's approval and the risk of compensation claims. Despite this, very few authorities or users had experience of claims for compensation after Article 4 Directions, with those identified relating mainly to temporary uses.
- 3.22 This procedure was generally seen as a cumbersome and often ineffective control on permitted development, the time required for preparation and approval preventing urgent responses and the resource costs preventing update of older Article 4 Directions. Although the Secretary of State's approval is not required for Article 4(2) Directions, these are limited to conservation areas and not possible to use for quick action in other situations. Use of this procedure can also result in variations in permitted development between areas that make it difficult for the public and planning officers to be clear on what restrictions apply in any area. Interest groups felt that Article 4 Directions were not used as much as they could be, reflecting fears of compensation claims.
- 3.23 Such views were broadly confirmed by research on Article 4 Directions in 1995 which found that their main use was in controlling permitted development alterations to buildings in conservation areas, temporary uses, and agricultural buildings in countryside areas.² However, such Directions were considered to be less effective in controlling temporary uses that move from site to site and there were deterrents to local authorities using them, such as the risk of paying compensation for refusal of planning permission, the time consuming, complicated procedures involved and because the requirement to demonstrate '*a real and specific threat*' was not sufficiently defined in policy guidance. That study recommended removing the compensation provisions related to these Directions.
- 3.24 Other research by CABE in 2000 on threats to the historic environment found that the character of conservation areas was being harmed by the effects of certain permitted development rights and noted the limited use made of powers to remove permitted development rights to control such adverse effects.³

2 Use of Article 4 Directions, Dept of the Environment, 1995.

3 Achieving Quality Streetscapes, CABE, 2002.

OTHER ARTICLES

- 3.25 Although few specific responses were received on the other Articles in the GPDO, it is clear that Article 3 provides a range of often important restrictions on certain permitted development rights that are not always immediately apparent from reading the relevant Part in Schedule 2 and there is no cross-referencing to draw users' attention to this. This necessitates reading several parts of the GPDO to ascertain the extent to which permitted development rights apply.
- 3.26 The consultation process indicated very mixed usage of Article 7 Directions, which can be used to restrict certain mineral permitted development rights. While a few mineral authorities used them fairly regularly with regard to large sites, most others had never found a need to apply them. Those authorities that applied these Directions considered they worked well. Only one response indicated any problems with the operation of Article 7 Directions, where the compensation liability was seen to be a deterring factor against use of this procedure to prevent removal of material from mineral waste deposits that had become important historical features in the Cornish landscape.

CONTROLS IN SENSITIVE AREAS

- 3.27 There are inconsistent approaches to restricting permitted development in sensitive areas such as conservation areas, National Parks and Areas of Outstanding Natural Beauty (AONB) which are referred to in the GPDO as Article 1(5) or Article 1(6) land. Specific restrictions in such areas apply in some Parts of the GPDO and not in others without obvious reasons. At the same time, other important areas e.g. World Heritage Sites have no special protection, and SSSIs relatively little.
- 3.28 Another general point for consideration is the different approach applied to permitted development rights within sensitive areas and in other areas. This is argued by some as protecting the environment of some areas (e.g. conservation areas) to a greater extent than other less attractive areas, ultimately resulting in a lower quality environment for the majority of residents. While perhaps reflecting a compromise and targeted approach aimed at reducing the number of planning applications which may otherwise result, the appropriateness of this approach needs to be considered.

NEED FOR CHANGE

- 3.29 Despite these deficiencies, the GPDO overall was regarded as operating reasonably well. Although one third of all responding local planning authorities considered that '*a complete revision*' of the GPDO is needed, a greater proportion of authorities (46%) considered that the GPDO only needed to be made easier to use or needed minor changes, while a further 15% sought only tightening of specific parts. Very few specifically sought replacement of the permitted development rights system for a more radical system. Among other stakeholders, there was greater acceptance of the current permitted development regime. Some 26% saw the GPDO as about right and a further 33% as needing no change or only being made easier to understand. Only 5% wanted complete revision.

CONCLUSIONS

- 3.30 Based on the above review, the main deficiencies and problems arising from the current GPDO are:
- the complexity of its drafting and layout, the lack of adequate and easily accessible definitions, and absence of an adequate User Guidance document all make it difficult to use and interpret;
 - inconsistencies between different categories of permitted development rights and limitations upon them, and between the rights granted to different undertakers;
 - anomalies in drafting which allow for abuses or unintended effects;
 - in some cases, the ability to carry out similar development under different parts;
 - inconsistency and lack of clear guidance on the procedures and limitations of consultation procedures with local authorities;
 - adverse effects arising from certain permitted development rights and inadequate controls on them, particularly in conservation areas and streetscape;
 - the limited effectiveness and use by local authorities of Article 4 Directions to restrict permitted development rights which give rise to problems, due to their complexity, extensive resource and time costs and compensation liability; and
 - the failure of certain categories of permitted development rights to support Government policy aims.

CHAPTER 4

The scope for change

- 4.1 Various pressures for changes to the GPDO have been identified, arising from identified problems with the current regime, from the need to ensure permitted development rights better support Government policy aims, to reflect changes in economic or development activity or to take account of changes in the bodies able to make use of permitted development rights. This section examines the extent of change that is needed to the GPDO to address these factors.

SCOPE FOR RADICAL CHANGE

- 4.2 As a first step, it is important to consider whether the current regime of permitted development rights continues to serve a useful purpose, whether such rights should be completely dispensed with or whether they should be replaced with an entirely new system.
- 4.3 There appear obvious benefits in being able to exempt certain types of development from normal planning control, in terms of reducing unnecessary regulation, reducing numbers of uncontentious planning applications and pressures on the planning system, and giving greater certainty on the lawfulness of their works to those making uncontentious proposals. Permitted development rights are one way of providing such exemptions. However, there are arguments that this approach creates inconsistencies because it tries to apply a series of set thresholds to a diverse range of developments and environmental contexts.
- 4.4 Consideration has therefore been given to other possible approaches, ranging from radical alternative systems to evolutionary change to the current GPDO regime. These options have been drawn from previous research, from the consultants' general experience of the planning system and from proposals made during the consultation process. To warrant major change of this kind, any of the alternative approaches or changes identified below would need to perform better than could be achieved by adjusting the current system of permitted development rights in order to improve the efficiency, consistency and predictability of the planning system, support Government policy objectives, and address the deficiencies identified earlier in this study.

a. Bring all Development Under Planning Control

- 4.5 One option would be to completely remove permitted development rights with all development (as defined under Section 55 of the 1990 Act) then made subject to planning control. To avoid a greatly increased burden on local planning authorities, applications for minor and uncontentious development could be filtered out by being dealt with at local community level. All proposals below a certain threshold would be submitted to a town, parish or community council, accompanied by

compulsory advertising and notification of the proposals. Proposals would be deemed to be granted after a specified time if no planning objections were raised. Only proposals with continuing objections which could not be negotiated away would be referred to the local planning authority and dealt with as a normal planning application.

- 4.6 While this approach would accord with aims for more local decision-making and community involvement, a major drawback is that it would introduce an additional tier of planning decision-making, as it is hard to see how established local organisations could cope with this greatly increased workload and whether they would be seen as objective. There is more incentive for local pressures to be imposed on individuals to withdraw objections, in which case no proper objective assessment may take place. There is also scope for some unacceptable development to slip through the system through absence of specific objection, and limited benefit to supporting Government policy aims.

b. Exclude more Development from Planning Controls

- 4.7 The need for permitted development rights could be removed or greatly reduced by widening the definition of development (below some defined threshold) in Section 55 of the 1990 Act to exclude more relatively minor matters so that planning permission is not required for them in the first place. These thresholds could reflect some of those in the current GPDO.
- 4.8 While in some ways this approach may be more understandable to users, depending on the thresholds applied, more development which is currently permitted development could be brought within planning control, possibly increasing local authority workloads. The diverse range of thresholds required would increase complexity within the 1990 Act. This system would require changes to primary legislation and make regular review of any thresholds more difficult. It may still lead to problems over interpretation as to whether works involve development or not. In some cases, there would be reduced scope for local authority control over design and impact on amenity and greater potential for adverse effects on neighbours, with such impacts having to be controlled by building regulations and other legislation.
- 4.9 In addition, there is the general potential drawback of introducing a radical new system which may itself create new, currently unforeseen difficulties as well as being initially disruptive to users accustomed to a different approach. These factors could be outweighed if substantial improvements were to arise compared with retention of the current regime.

c. Different Permitted Development Rights for Different Areas

- 4.10 Another possible approach would be to provide different sets of permitted development rights, with different limits and restrictions, in urban and rural areas. This would reflect the differing circumstances applying in such areas and recognise that a higher limit on dwelling extensions, say, in rural areas could have less adverse impacts than in a dense urban area. To some extent, the current GPDO does provide rights that apply largely to rural areas e.g. Parts 5, 6 and 7. The issue becomes more important for Parts that apply in either urban or rural situations, e.g. Parts 1, 2, 8 and 24. This approach would raise difficulties in defining whether some locations are urban or rural. It would also increase the length and complexity of the GPDO generally, make it harder to interpret and could raise perceptions of unfairness.

d. Amend the Current System of Permitted Development

- 4.11 This option allows different degrees of change, on a scale ranging from improved drafting to comprehensive revision but without changing the basic principle of having permitted development rights. A combination of some of the following measures is possible:
- i. *Redrafting and reformatting*: This would involve no major changes to the principles of the GPDO but would simply aim to improve the drafting and layout of the document to improve comprehensibility and ease of use, remove loopholes and inconsistencies and clarify and expand definitions.
 - ii. *Review the scale of development permitted within existing categories*: This would involve broadly retaining existing categories of permitted development rights but reviewing the types and scale of development allowed within them, tightening up or relaxing limitations as appropriate.
 - iii. *Review the Categories of Permitted Development*: This would involve reconsidering whether permitted development rights are still appropriate for certain types of development or undertakers. It would consider whether some Parts could be deleted or merged or new Parts created, either for consistency or to extend permitted development rights to other development categories that do not currently benefit from them.
 - iv. *Alter Prior Approval Procedures*: At present, only certain categories of permitted development are subject to a prior approval or notification requirement. This procedure could be reviewed to address its continued usefulness, the length of time for determination, the scope for public consultation, as well as any benefit in extending it to other types of development.
 - v. *Amending the Articles*: General restrictions on permitted development rights, either through use of Article 3, 4 or 7, or through excluding rights within certain types of sensitive areas, could be amended to either relax or extend these controls.
 - vi. *Local Permitted Development Rights*: This procedure, in combination with other changes described above, would provide greater flexibility and a more targeted approach to varying nationally set permitted development rights.
- 4.12 A combination of such measures would deliver a comprehensive revision of the GPDO without changing the basic principles of permitted development. The benefits of this approach would be to build upon an established system with which users are generally familiar and which, subject to addressing specific concerns, is considered as working reasonably well. This approach would also allow a targeted approach to particular areas of concern, such as interpretation difficulties, without losing elements that do not appear to give rise to problems.
- 4.13 While it can be argued that this approach would perpetuate the basic problem in the GPDO of applying set thresholds to too wide a range of situations, so causing inconsistency and lack of even-handedness, the range of improvements which can be made under this approach should go a long way to satisfying the various problems raised and the criteria for change identified earlier.

ASSESSMENT OF ALTERNATIVES

- 4.14 After considering these alternatives, the preferred approach is to build upon the current system of permitted development provided by the GPDO but subject this to comprehensive review. This decision reflects the following factors:
- The Planning Green Paper did not propose significant change to the national regime of permitted development rights and consultation responses to this did not suggest significant disagreement with this approach.
 - Consultation responses to this study did not identify significant pressures to dispense with the current system and introduce a new one. The calls for complete revision of the GPDO can be adequately addressed through this approach.
 - The majority of the practical problems with the GPDO appear to arise from difficulty of interpretation, inconsistencies and specific restrictions – the detail of the GPDO rather than the overall approach and principles – and these should be capable of being addressed by revising the existing system.
 - A recent independent review of the GPDO in Scotland, a broadly similar system to that operating in England and Wales, considered more radical options but ultimately recommended amendment of the current system rather than more fundamental change.
 - A completely new system is more likely to introduce new problems. The current GPDO has evolved through experience and with amendments to address problems as they appear. Its deficiencies are known and it appears simpler to address these, close current loopholes and inconsistencies without introducing many new ones.

APPROACH TO REVIEWING THE GPDO

- 4.15 Having determined to retain and build on the existing system of permitted development rights, a comprehensive review of the GPDO has been carried out. As well as any general changes necessary to the GPDO, this review considered whether the current permitted development rights in Schedule 2, along with the categories of development and the users they apply to, remain appropriate, and whether such rights should be extended to other categories.
- 4.16 As noted earlier, to make permitted development rights a more positive tool to encourage change in appropriate directions, it is important that permitted development rights should promote development or environmental outcomes in tune with Government policy aims. Recognising that different strands of Government policy can conflict with each other, the overriding aim of this assessment should therefore be for permitted development rights to be defined such as to help achieve an acceptable outcome, and a positive balance against policy aims, recognising that this may not always be easy to assess.
- 4.17 With this overriding purpose in mind, the following sections of this report consider each of the main components of the GPDO, examining any need for change. In doing so, it has to be recognised that a consequence of seeking better support for

policy aims which have sustainability as an overriding theme may be a need for more restrictive permitted development rights, rather than any relaxation. In some cases, additional controls or consultation requirements may only formalise existing informal procedures. However, it is important that imposing greater restrictions does not worsen the efficiency of the planning system as well as make the GPDO more complex and harder to understand than it currently is. A balanced approach is required with any change proposed being the minimum needed to achieve the objective and other factors need to be taken into account including:

- the extent to which current rights are being used;
- the volume of planning applications which could result if specific rights were withdrawn;
- how urgently required is the type of development permitted;
- the adequacy of the controls and limitations in place; and
- the effect of alterations on making the GPDO easier to interpret and use.

4.18 Any change must also be justified on the basis that:

- it addresses a widespread problem rather than an exceptional case, although the potential for a currently small problem to spread must be taken into account;
- it is justified by the strength of the impacts/concerns identified; and
- even if not justified by the two factors above, the change is likely to bring about a real improvement in the operation of the system or in supporting policy aims. This may, for example, be because of the greater transparency or ease of using the GPDO which results.

4.19 It is important to note that because no change is sought to a particular part by one community sector, which may not directly experience problems, this does not mean that change is not justified by other factors.

INDIVIDUAL PERMITTED DEVELOPMENT RIGHTS

4.20 Taking account of the criteria above, in each of the following Chapters 5-38, the following aspects of permitted development rights in the Schedule 2 categories are examined:

- the purpose which permitted development rights in that category are intended to serve;
- the nature and extent of usage made of these rights, with examples of particular problems or benefits where found;
- a summary of any pressures for change or retention;
- the relationship between these permitted developments and Government policy aims;

- the consistency of any potential changes with the criteria set out above; and
- an assessment of whether change is needed and justified and the types of changes proposed.

4.21 This analysis was supported by examination of case studies that identified the extent of problems in some parts of the GPDO and possible means of addressing them, tested and examined the implications of these changes and considered examples of good practice which could be extended more widely.

CHAPTER 5

Part 1: Development within the curtilage of a dwelling-house

- 5.1 These rights allow various extensions and alterations to dwelling houses as well as developments within the gardens or curtilages of these houses.
- 5.2 Class A permits the enlargement, improvement or other alteration of a dwelling-house, subject to restrictions relating (amongst others) to the cubic content of the resulting building, the distance from a highway and the curtilage boundary, and the percentage of curtilage ground coverage.
- 5.3 Class B permits the enlargement of a dwelling-house consisting of an addition or alteration to its roof, subject to height, and restrictions on the resulting dwelling-house cubic content.
- 5.4 Any other alteration to the roof of a dwelling-house is permitted by Class C, if it would not result in a material alteration to the shape of the dwelling-house.
- 5.5 Class D permits the erection or construction of a porch outside any external door of a dwelling-house, subject to floor area and height limitations, and the distance being more than 2 metres from the curtilage boundary with the highway.
- 5.6 Class E permits the provision within the curtilage of a dwelling-house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling-house, or the maintenance, improvement or other alteration of such a building or enclosure. Development is not permitted between the house and the highway, unless the development would be 20 metres or more from the highway; nor if height or area limits are exceeded; nor is development over 10 cubic metres permitted within 5 metres of the house.
- 5.7 Class F permits a hard surface for any purpose incidental to the enjoyment of the dwelling-house as such can be provided within the curtilage. A container for oil storage for domestic heating can be provided under Class G.
- 5.8 Lastly, Class H permits a satellite antenna to be installed, altered or replaced within the curtilage of a dwelling-house, subject to size, siting and height limitations. Class H is currently the subject of a separate Government review to determine whether its permitted development rights on satellite dishes should be relaxed, while continuing to minimise environmental and visual impact.
- 5.9 Certain of the Classes of Part 1 are also further restricted on Article 1(5) land, i.e. Classes A, B, E and H.

- 5.10 The specific aim of these residential permitted development rights is principally to exclude from planning controls those minor development proposals which do not give rise to material planning issues.

ISSUES

- 5.11 A very high proportion (80%) of responding local planning authorities indicated that Part 1 permitted development gave rise to some problems while 72% indicated some difficulties in interpreting this Part. Some 88% of responding local authorities expressed a view on whether Part 1 rights were too restrictive or otherwise. Of those, while 43% considered them about right, slightly more (44%) felt they were too loosely defined, and 13% as too restrictive.

- 5.12 In practice, Part 1 raises many concerns cited repeatedly amongst planning authorities, interest groups and users alike. These concerns are widespread, wide-ranging and are summarised below in relation to the Classes of Part 1 they relate to:

- general ● permitted development rights undermine Green Belt policy and AONBs (e.g. extensions);
- general ● permitted development rights are used to implement objectionable development incrementally that would otherwise be refused planning permission;
- general ● the cumulative effects of *'improvements'* to dwelling-houses erode the character of areas, particularly conservation areas and National Parks and necessitate Article 4 Directions to prevent such erosion;
- general ● the relationships and overlaps between Classes A and B, A and C and A and E are all unclear;
- general ● alterations to garden ground levels are not addressed;
- general ● no account is taken of effects on Tree Preservation Orders (TPOs);
- general ● harmful effects of permitted development rights on nearby listed buildings;
- general ● there is an unacceptable ability to use permitted development rights after a planning permission has been implemented, leading to very large extensions;
- general ● many necessary definitions required to assist in dealing with the following concerns are not provided e.g. *adjacent to a highway*; *ground level*; *uneven land*; *original building*; *resulting building*; *volume of a dwelling-house*; *cubic content*; *curtilage*; *'purpose incidental to the enjoyment of a dwelling-house as such'*; ancillary uses; *ridged roof*; *terraced house*; *height* (i.e. *'to include the height of any railing, parapet, balustrade or such like on the roof of a building whose height is to be measured'*); and *ridged roof*.

- A ● the lack of controls over the materials used for extensions;
- A ● whether inserting a new window in a wall close to neighbour's windows and able to cause overlooking is permitted development;
- A ● uncertainty as to whether a party wall is included within the curtilage of a dwelling and whether development on it falls within Part 1;
- A ● extensions can often result in a breach of BRE day/sunlight standards;
- A.1 ● extensions and ancillary buildings can result in detrimental impacts on the amenities of adjoining residents (e.g. from overlooking or the scale of the building, in circumstances when the neighbouring garden is at a lower level, or when the adjoining garden is smaller). This is particularly caused by permitted development allowing a 4 metre high extension on a boundary while a boundary fence is limited to only 2 metres;
- A.1 ● balconies appear to be exempt from control, while there are inconsistencies with how roof terraces (e.g. with railings), canopies and decking are considered;
- A ● flat roof extensions to bungalows are unintentionally encouraged;
- A.1 ● the dimensions of the original dwelling-house are not seen as relevant, if part has been demolished years earlier, when considering permitted development rights to extend towards a highway (Class A.1(c) (i));
- A.1/A.3 ● in conservation areas, harmful permitted development can be undertaken (e.g. new extensions, replacement UPVC windows, dormer windows and roof lights), which require Article 4 Directions to prevent them;
- A.1/E.1 ● calculating the volume of a dwelling-house is complicated and either takes excessive amounts of planning officers' time or is not used to assess permitted development rights;
- A./E ● Class E permits a 3 metre high fence, in the same situations as Part 2 Class A would permit only a 2 metre one;
- A.2/E ● confusion and duplication between Class A.2 and Class E can lead to greater permitted development rights on Article 1(5) land being imparted than elsewhere;
- A.3 ● uncertainty as to how original but detached outbuildings should be treated, if within 5 metres of the dwelling-house;
- B/C ● inconsistencies in permitted alterations to roofs (e.g. hipped roofs can be converted to gables affecting character of streets);
- B.1 ● a dormer window will not be permitted development, simply because of the existence of a previous extension rather than due to visual impact;

- B/C ● uncertainty on whether planning permission is required for newer innovations e.g. solar panels which are not flush with a roof;
- B/C ● significant changes can occur to roof lines, having an adverse effect on amenity, design and overlooking;
- E ● inconsistencies in the consideration of outdoor swimming pools i.e. whether they constitute a building and have volume;
- E ● difficulties arise from Class E, where neighbouring properties are at right angles and adverse impacts can result;
- E ● difficulty in determining whether a formerly detached or semi-detached property can become a terraced house;
- E ● it appears inequitable that a shed erected in the rear garden of a maisonette is not permitted development when it is allowed for a house;
- E.1 ● the potential to develop up to 50% of a garden's area for ancillary buildings is seen as inequitable when compared with other restrictions imposed, particularly regarding terraced housing;
- E.1 ● since the 50% coverage limit applies to the whole curtilage, dwellings with large front gardens can build over almost all a small rear garden;
- F ● it is not possible to control the extent of *'hard surface'*, with permitted development rights used to provide off-street, front garden parking to the detriment of the street scene and biodiversity;
- G ● the omission of LPG tanks from permitted development rights when oil tanks are permitted;
- H ● there should be maximum flexibility for the public and the ability to install a terrestrial TV antenna; a satellite dish of up to 90 cm in diameter and a broadband/satellite/or mesh antenna under permitted development rights;
 - difficulties with reception and health and safety mean that dishes are often located in the most convenient location, rather than the least visually intrusive;
- H.2 ● conditions on satellite dishes are not adhered to, leading to a proliferation; and
 - it is impossible to enforce removal of redundant dishes.

5.13 All of the above wide-ranging concerns have the combined effect of leading to local planning authorities having to apply significant resources to queries on whether householder development is permitted. Some have already or are introducing forms, which are necessarily complicated, to assist in determining householder permitted development rights in individual cases.

- 5.14 From the wider community's point of view, householder permitted development rights are also unnecessarily complex, particularly where an aggrieved neighbour has to understand that a local planning authority has no control over permitted development activities.

SCOPE FOR CHANGE

- 5.15 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 1 and discussed below.
- 5.16 Householder permitted development rights are often seen as being inconsistent with Government policy objectives for sustainable development, good design and public involvement e.g. they give the right to build further in floodplains and there is no scope for local planning authorities to formally influence design quality, nor for neighbours to comment and formally seek scheme amendments. Advisory Supplementary Planning Guidance and local plan policies are used but cannot be fully effective as they cannot be applied to any decision on individual proposals. Contraventions of householder permitted development rights are also seen as often too difficult to enforce, due to the complexity of Part 1. Overall, Part 1 is not serving Government policy aims well, as being far too complicated and its Classes too loosely defined to achieve the purposes that householder permitted development rights are intended to serve.
- 5.17 Also, changes in technology have prompted a separate ODPM review of satellite dishes and antennas and on 7 April 2003 a consultation paper on these invited comments on possible changes to Planning Regulations. This consultation proposes the following five options for the installation of dishes/antenna, with slightly different restrictions for dwelling-houses in designated areas:
- a. no change;
 - b. installation of two antennas (either a dish or antenna or two of either type);
 - c. distinguishing between developments that front roads and others, permitting three antennas in total, with two fronting the road;
 - d. distinguishing between developments that front roads and other areas, permitting three antennas fronting a road and unlimited antennas elsewhere; and
 - e. no restrictions.
- 5.18 In the case of options (b) – (d), development would be subject to size and locational restrictions. The consultation paper does not specify options for satellite dishes and antenna on other buildings, which relate to Part 25 of the GPDO. In view of this consultation, it would be pre-emptive to recommend changes to Part 1, Class H of the GPDO at this time. It would be more appropriate for the findings of the consultation process to inform changes to the GPDO.

- 5.19 From the above concerns and criticisms, which are all soundly based on experience of operating or using Part 1 on a day to day basis, or an analysis of its consequences, it is clear that there is significant pressure for change and Part 1 should be considered for redrafting. The scope for rationalising Part 1 from 8 classes to 2 should be considered, i.e. a new Class A for ‘*development attached to a dwelling-house*’ and Class B for ‘*development within the curtilage of a dwelling-house*’. This re-classification would assist in simplifying the operation of Part 1 and dealing with the problems raised. Some of these changes are examined in a case study (Case Study 1, Annexe 7).
- 5.20 Using the Scottish GPDO and recommendations for its review⁴ as a starting point, the two classes of Part 1 could then be drafted on the basis of the following, with a summary of the reasoning behind each category given in parenthesis below each one:

Class A: Development attached to the dwelling-house

- 5.21 Planning permission is not required for the enlargement, improvement or other alteration of a dwelling-house. Development is not permitted and planning permission is required for the enlargement, improvement or other alteration of a dwelling-house if:
- i. *the dwelling is a flat, an apartment, a maisonette, park home or mobile home; or*

(to reflect the fact that a flat, an apartment, a maisonette, park home or mobile home is not a dwelling-house and therefore does not enjoy permitted development rights under the terms of this Class)
 - ii. *the floor area (measured externally), including any roof or loft floorspace with velux or dormer windows would exceed the floor area of the original dwelling-house:*
 - *in the case of a terraced house or a dwelling-house in a conservation area, by more than 16 sq.m. or 10%, whichever is the greater;*
 - *in any other case, by more than 24 sq.m. or 15%, whichever is the greater;*
 - *in any case, by more than 40 sq.m.*

(volume is replaced by comparable area measurements in order to simplify understanding and interpretation of permitted development rights)
 - iii. *one or more dormer window is created with the floor area beneath exceeding 3 sq.m in the case of a terraced house or a dwelling-house in a conservation area, or 4 sq.m in any other case;*

(to prevent numerous and large dormers which would otherwise be controlled by current volume measurement)
 - iv. *the enlargement, improvement or other alteration creates a separate unit of residential accommodation; or*

4 Research on the General Permitted Development Order and Related Mechanisms, Scottish Office, 1998.

- v. *the height of the resulting building exceeds the height of the highest part of the roof of the original dwelling-house; or*
(to reflect existing Class A.1(b), Class B.1(a) and Class C.1))
- vi. *the alteration is to change from a hipped to partially hipped or a gable end roof; or*
(to reflect design concerns arising from existing Classes B and C)
- vii. *the dwelling-house is within a National Park, an Area of Outstanding Natural Beauty, the Broads, a protected area under the Wildlife and Countryside Act 1981, or the curtilage of a Listed Building; or*
(to enable a significant streamlining of the GPDO, assist in the preservation and enhancement of such areas, and reduce the need for Article 4 Directions. This will replace existing Classes A.1(a)(i), A.2 and A.3(a)(i) and B.1(e))
- viii. *the erection or construction of a porch outside any external door of the dwelling-house would exceed 2 square metres (measured externally) ground area, any part of the structure would be more than 3 metres above ground level or any part of the structure would be within 2 metres of any boundary of the curtilage of the dwelling-house with a highway;*
(to reflect but also amend existing Class D)
- ix. *with the exception of satellite antenna, any part of the development would be both within 10 metres of a highway and nearer to the highway than the original dwelling-house; or*
(to reflect Class A.1(c)(ii))
- x. *any part of the development which is within 4 metres of the boundary of the curtilage of the dwelling-house is increased in height as a result of the development or exceeds 3 metres in height; or*
(to amend existing Class A.1(d))
- xi. *in consequence of the development the area of ground covered by buildings within the curtilage would exceed 25% of the total area of the curtilage (excluding the ground area of the original dwelling-house and any garage or ancillary building permitted by the original planning permission or built at the same time as the original dwelling-house); or*
(to amend existing Class A.1(e))
- xii. *it involves a projection beyond any existing roof slope by more than 150 mm on any side facing a highway, and any projection on any side facing a highway in a conservation area; or*

(to allow pitched roof extensions and other roof alterations at the rear of dwelling-houses without the requirement for planning permission. Reviews existing Class B.1(b) and encourages use of flush roof lights generally, but requires them in conservation areas)

- xiii. *the development takes the form of or creates (with or without a means of enclosure) a balcony, roof garden, roof terrace or decking;*
- xiv. *the development creates in a wall a new window or door above ground floor level or above 3 metres in height from ground level, whichever is the lower;*

(to reflect concerns regarding access or overlooking and/or access to a flat roof at first floor level)
- xv. *for the removal without like-for-like replacement of a bay window, chimney stack or porch within a conservation area;*

(to address issues raised by the Shimizu judgement)

Class B Development within the curtilage of a dwelling-house

Planning permission is not required for development within the curtilage of a dwelling-house, where for the carrying out of engineering operations or the provision of any building, structure or other apparatus required for a purpose incidental to the enjoyment of the dwelling-house or the maintenance, improvement or alteration of such a building, structure or other apparatus. Development is not permitted and planning permission is required if:

- i. *it consists of the erection or creation of a separate or new dwelling; or*

(to reflect existing Class E.1(a))
- ii. *with the exception of hard surfaces, satellite antenna, walls, gates and fences, any part of the development would be both within 20 metres of a highway and nearer to the highway than the original dwelling-house; or*

(to reflect Class E.1 (b)(ii))
- iii. *the dwelling-house is within a National Park, an Area of Outstanding Natural Beauty, the Broads, a protected area under the Wildlife and Countryside Act 1981, or the curtilage of a Listed Building; or*

(to enable a significant streamlining of the GPDO, assist in the preservation and enhancement of such areas, and reduce the need for Article 4 Directions. Will replace existing Classes E.1(f) and H.1(d))
- iv. *the height of the development excluding any structure used as a means of enclosure exceeds 3 metres from natural ground level; or*

(to reflect Class E.1(d)(i) and (ii))

- v. *in consequence of the development the area of ground covered by buildings within the curtilage would exceed 25 sq.m or 25% of the total area of the curtilage (excluding the ground area of the original dwelling-house and any garage or ancillary building permitted by the original planning permission or built at the same time as the original dwelling-house, whichever is the lesser); or*

(to reflect existing Class E.1(e))
- vi. *the total area of any existing and new hard surface provided would exceed the lesser of 15 square metres or 50% of the garden area of the dwelling-house; or*

(to revise existing Class F to reflect concerns about the scope for hardstanding and the protection of garden ground at the front, rear and side of dwelling-houses)
- vii. *it would result in more than one container for the storage of oil or liquefied petroleum gas within the curtilage of the dwelling-house; or*

(to revise existing Class G)
- viii. *it involves the provision of a container for the storage of oil or liquefied petroleum gas exceeding 3500 litres in capacity or such container is more than three metres above ground level; or*

(to reflect existing Class G.1)
- ix. *any engineering operations for embanking and terracing where fronting a highway, and in any other case, where the operations result in changes to natural ground levels exceeding one metre in height; or*
- x. *the structure is to be used for the keeping of pigs, poultry, doves or pigeons, or for any other purpose other than a purpose incidental to the enjoyment of the dwelling-house as such.'*

5.22 The above draft classes do not include any allowance for satellite dishes and antennas, which should be added following the results of the current consultation process.

Case Study 1:

Patio-style doors were inserted in a house in East Grinstead at first floor level, to provide access to a flat roof. Although permitted development rights were claimed as an alteration to an existing window, these did not apply as the alteration was within 2m of the curtilage and the house itself exceeded 4m in height. An appeal against enforcement was dismissed as the doors would 'facilitate a potentially un-neighbourly use of the roof area'. The proposed change to Part 1, to prevent creation of a roof terrace and exclude creation of new doors at first floor level, would reinforce the case that the door replacing a window at first floor level required planning permission.

5.23 Additional conditions attached to the proposed two new classes and interpretations should cover:

- relating permitted development rights for new curtilage buildings/dwelling-house extensions to other development which has been granted planning permission but which has not yet been implemented, or which has been partially implemented. Where planning permission is granted for an extension, is extant and has yet to be built or completed, the permitted development rights of the property should be taken as having been used. If the applicant wants a further curtilage building or extension, a planning application must be made. The local authority could then consider if the two together would constitute over-development;
- requiring matching materials to the original dwelling-house;
- development in Classes A or B in a conservation area causing no adverse impacts on design and the historic environment, on being assessed against a '*Conservation Area Management Code*' prepared nationally and then adapted/adopted locally, and supported by development plan policy. Only development complying with the Code would have permitted development rights, which for example would state that replacement windows in conservation areas constitute development if altering the appearance of the dwelling-house by non-use of matching materials. Bodies such as English Heritage would be involved in establishing such a Code;
- the natural ground level not sloping or dropping either within the planning unit, adjacent to or adjoining it. Where there is a difference in natural ground level between two sites, if any part of the building proposed comes within 2 metres of the boundary of the adjoining premises, the height should be measured from the lower natural ground level;
- new buildings etc. under Class B being at least 3 metres from an adjoining dwelling-house (to overcome loss of amenity issues, particularly relating to corner plots);
- limited or non-opening translucent windows being required for any new openings in return frontages within a specified angle and distance and overlooking windows in a neighbour's property;
- any roof extension under Class A should not directly abut a party wall with height measured in relation to the roof itself and not e.g. a parapet or party wall.

5.24 Further options for change would be to exclude dwelling-houses in conservation areas from Part 1; either from Classes A and B, or just Class A. As these changes would both have significant implications for local planning authority workloads, they are not being proposed at this stage but if the concept of '*Conservation Area Management Codes*' cannot be taken forward, they should be considered further as possible alternatives.

5.25 It would also be appropriate for Part 1 permitted development rights to be consistent with Building Regulations, or vice versa, in effect to require Building Regulations approval for all relevant householder permitted development rights, and thus assist all users of both procedures.

- 5.26 The interpretation of Part 1 should also make clear that, for the purposes of Part 1 permitted development, party walls are included within the curtilage of both properties abutting that curtilage but, as indicated above, permitted development rights do not apply where a roof extension directly abuts a party wall.
- 5.27 Further possible changes which could be considered would include:
- i. specifically excluding new cellars including the provision of new basement windows (as these often have the effect of altering the street scene);
 - ii. specifically excluding render, harling and pebbledash from Article 1(5) land; and
 - iii. specifically excluding new septic tanks or sewage treatment plants.
- 5.28 Certain elements of the new Part 1 would require substantial advice in any new User Guidance document: e.g. explaining that buildings incidental to the enjoyment of a dwelling-house within 5 metres of it, built at the same time or referred to in the planning permission for the dwelling-house, do not count against permitted development limits; and that sheds and conservatories have to comply with Part 1. The User Guidance document should explain how to measure buildings (including swimming pools) and how to calculate area. It should also explain how TPOs are not overridden by permitted development rights. A separate householder manual on Part 1 should also be considered, taking a similar form to the ODPM's *Planning, A Guide for Householders, What you need to know about the Planning System* (2003).
- 5.29 One effect of the above re-drafting would be to remove the current control over the size of extensions by volume limits in relation to the original dwelling-house. Instead, control would be in terms of floorspace in relation to the original dwelling-house and distance from curtilage boundaries as currently applies in the Scottish GPDO. Discussions with several Scottish local planning authorities did not identify any problems or abuses arising from this approach. Case Study 1 endorses the need to introduce such changes, and the benefits arising from them. The area limits being proposed are not substantially different in terms of sizes of extensions to those that would result from the current volume measurements.
- 5.30 The main benefit from the proposed changes above would be to bring about greater scope for local authority influence on the quality of design of householder developments, by requiring planning applications for the more significant categories of such development, and for more categories of development in sensitive and protected areas. Public involvement in householder developments would then be possible in more cases than at present. This outcome would be in line with the Government wishing to see national policy implemented at the local level. Achieving design quality is also one of the Government's current and principal policy objectives in itself.
- 5.31 A neighbour prior-notification system of permitted development rights to be exercised would be of limited merit. It could only contribute nominally to the Government's aim of wishing to see greater community involvement in the appearance and character of their locality, thus contributing to social inclusion objectives, as there would be only scope to change a scheme if the householder proposing it agreed.

- 5.32 The revised Part 1 would have the disadvantage of resulting in more planning applications, with the implications for local planning authority workloads and resources being significant. This would be counterbalanced by fewer informal and complex enquiries, by schemes being revised to comply with the new permitted development limitations, by far fewer Article 4 Directions being necessitated, or if the Government's recent Green Paper proposals for reform of the planning system come to fruition, leading to streamlined planning application determination processes and more resources being given to local authorities to administer them.
- 5.33 On balance, and given the time delay involved in revising the GPDO and drafting the accompanying guide, it is likely that the above proposals would be of overall benefit if implemented, as they would (or could be timed to) coincide with a revised development control system having been put in place.
- 5.34 While a number of recommended changes are proposed to Part 1, which for brevity are not repeated here, **the principal change is that Part 1 should be rationalised from 8 classes to 2** with a new Class A for '*development attached to a dwelling-house*' and Class B for '*development within the curtilage of a dwelling-house*'. This re-classification, together with redrafting in a simpler format, would address a number of problems and would involve replacing the volume control on extensions to one based on floorspace and distance from boundaries and reducing the proportion of the curtilage which can be covered by buildings to 25%. Additional varying degrees of control would apply to extensions/alterations to dwelling-houses in sensitive areas and to dwelling-houses in conservation areas.

Table 1: Assessment of recommendations for change to Part 1 of the GPDO

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>X Lack of support for protection of urban character.</p> <p>X Contrary to good design objectives.</p>	<p>XX Complex enquiries regarding pd.</p> <p>X Enforcement actions necessitated.</p>	<p>√√ Flexibility for householders in adapting properties.</p> <p>X Uncertainty as to whether planning permission required.</p>	<p>X Unsignificantly extensions.</p> <p>XX Harm to character of local areas (including cumulatively).</p>	<p>By providing flexibility for householders, harmful impacts on residential amenity and character frequently arise.</p>
1. Rationalise from 8 to 2 classes i.e. development attached to, and development within the curtilage of a dwelling-house – (classes A and B respectively).	<p>√ Supports simplification of the planning system.</p>	<p>√√ Likely reduction in complex pd queries, CLOPUDs and enforcement action.</p> <p>X Increase in number of planning applications.</p>	<p>√ Less complex system helps householder decide if require planning permission or not.</p>	<p>√ Fewer neighbour objections to pd, as greater clarity over what needs planning permission.</p>	<p>Net positive contribution to policy aims, with no adverse impact on users and local authorities.</p> <p>Change recommended.</p>
2. Clarification that pd apply only to a dwellinghouse, as defined.	<p>√ Supports protection of urban character.</p>	<p>X Likely small increase in no. of planning applications and enforcement action.</p>	<p>X Restricts householder flexibility in property alterations.</p>	<p>√ Protects character of local areas.</p> <p>√ Enhanced opportunities to comment on neighbour proposals.</p>	<p>Net positive combination to policy aims, with limited adverse impact on users and local authorities.</p> <p>Change recommended.</p>
3. Use of floor areas instead of volume to measure extensions.	<p>√ Supports simplification of the planning system.</p>	<p>√√ Reduction in Officer time spent measuring volume to check pd.</p> <p>√√ No increase in number of applications as size limit unchanged.</p>	<p>√ Less complex system helps householder decide if need planning permission or not.</p>	<p>√ Fewer neighbour objections to pd, as greater clarity over what needs planning permission.</p>	<p>Net positive contribution to policy aims, with no adverse impact on users and local authorities.</p> <p>Change recommended.</p>

Table 1: *continued*

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
4. Greater restrictions on roof alterations.	√ Supports protection of urban character and design aims.	XX Likely increase in no. of planning applications.	X Perception of increased regulatory burden.	√ Reduces number of unsightly extensions. √ Helps maintain character of local areas.	Net positive contribution to policy aims and affected parties with limited adverse effects on users and local authorities. Change recommended.
5. Removal of/conditions attached to Class A and B pd in sensitive areas and in conservation areas respectively.	√ Supports simplification of the planning system. √√ Supports protection of rural character and historic environment. √√ Supports protection of built environment generally, and also historic environment specifically.	XX Likely increase in no. of planning applications and enforcement action. Need wider policies in development plan to cover what was pd.	√ Protects character and local distinctiveness of local areas. X Perception of increased regulatory burden.	√ Protects character and local distinctiveness of local areas. √ Protects residential character.	Net positive contribution to policy aims and affected parties, with limited adverse effects on users and local authorities. Change recommended.
6. Changes to pd relating to development near curtilage boundary and extent of ground covered within curtilage.	√√ Supports protection of residential character and amenity. √ Supports sustainability aims e.g. to reduce car parking. √ Indirect support for biodiversity.	X Likely increase in no. of planning applications and enforcement action. – Need policy in development plan to cover what was pd.	X Perception of increased regulatory burden, as restricts householder flexibility in property alterations. √ Protects residential character/density of local area.	√ Protects residential character.	Net positive contribution to policy aims and affected parties, with limited adverse effects on users and local authorities. Changes recommended.

√ indicates positive impact from √ (low) to √√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 6

Part 2: Minor operations

- 6.1 Part 2 permits various minor forms of development on the basis that their scale or nature is such that they would be granted planning permission if an application was required.
- 6.2 Class A allows the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure, unless within the curtilage of or surrounding a listed building, or if the height of a new means of enclosure and adjacent to a highway exceeds 1 metre, or 2 metres otherwise.
- 6.3 Class B permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class other than Part 1, Class A. Class C allows exterior painting of any building or work.

ISSUES

- 6.4 Approximately 47% of responding local authorities indicated that Part 2 permitted development caused them some problems while 38% indicated some difficulties in interpreting this Part. Some 86% of planning authorities expressed a view on whether Part 2 rights were too restrictive or otherwise. Of those, the great majority (83%) considered them to be about right, 9% as too loosely defined, and 8% as too restrictive.
- 6.5 Consultation responses from both local authorities and users, however, highlight that the implications of Part 2 for streetscape and the amenity and urban design of residential areas in particular can be significant and sometimes detrimental. Problems raised in relation to Part 2 permitted development rights include:
- the absence of any definition for *'highway'* and *'adjacent to a highway'*;
 - adverse impacts on the character of areas from front gardens being paved over and walls/fences removed, unless an Article 4 Direction is imposed (this also relates to Part 31);
 - uncertainty as to whether Part 2 includes creating a means of vehicular access over the footpath of a highway, or whether this element requires planning permission;
 - uncertainty, and a number of appeal cases, on the interpretation of the term *'adjacent to the highway'* when determining the permitted height of means of enclosure;
 - the difficulties arising from changes in ground level and sloping ground, when determining height of walls/enclosures;

- the ability to interpret Part 2 as allowing railings around a flat extension roof to enable its use as a roof terrace;
- the visual impacts in rural areas of use of non-traditional materials to form a fence or enclosure e.g. walls formed from old car tyres or large earth embankments (see Case Study 2, Annexe 7);
- Class B can result in a very wide and long roadway, and a major construction, with e.g. retaining walls;
- under Class B, a permanent means of access can be created, to serve a temporary use such as a market or car boot sale; and
- the proliferation of fences in the countryside e.g. relating to the sub-division of land into leisure plots, which is detrimental to landscape quality.

6.6 The last of the above concerns has been identified as a significant and increasing problem in rural areas, including in the Green Belt. It relates to adverse effects arising from enclosure of small plots of land. This arises where speculative development companies buy and sub-divide agricultural land into small plots, which are then sold off individually, either as a leisure plot or on the basis that at some future date it may be possible to achieve planning permission for a dwelling on this plot. Each plot owner can then make use of permitted development rights to erect fencing, and in some cases the sale covenants require this. Caravans and other structures are sometimes placed on the plot and hardstanding provided without planning permission. The overall effect is to completely change the character of undeveloped land in rural areas with fencing and other development, which may eventually lead to it becoming developed land more likely to be allocated for development. While Article 4 Directions could be used to remove Part 2 rights, the problem is in doing this quickly enough since this procedure does not operate retrospectively. There is also some risk of compensation being sought. This appears a significant threat to the development planning system since it can lead to circumventing proper planning controls.

SCOPE FOR CHANGE

- 6.7 An assessment of the benefits and deficiencies of the current rights under this part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 2 and discussed below.
- 6.8 While Part 2 was not seen by most respondents as needing significant change, the above concerns suggest that developments under Part 2 are having some harmful impacts on the environment in urban, rural and historic locations, contrary to Government policy aims of achieving sustainable development, high quality design and more indirectly PPG13 policies for promoting the use of non-car means of transport. In particular, the use of unconventional materials, while infrequent, can cause severely harmful environment consequences in clear conflict with Government policy objectives for sustainable development and protection and enhancement of the rural environment.

Case Study 2:

In Selby district, the local authority took enforcement action, based on harm to rural amenity, against the use of bunds up to 2 metres high and made of compressed tyre casings to enclose agricultural fields traditionally bounded by hedgerows. However, on appeal, despite the unconventional materials used, these bales were considered to be a means of enclosure falling within Part 2 permitted development and no action could be taken.

- 6.9 There is uncertainty, and a number of conflicting appeal cases, on the interpretation of the term '*adjacent to the highway*' when determining the permitted height of a means of enclosure. Some local authorities use a 2 metre distance as a rule of thumb but a clear definition should be given in the GPDO to give clarity and avoid the need to examine appeal decisions. This term should at least be defined, the suggestion being it would mean within 3 metres of the back edge of the highway, as defined in Annexe 9 to include footpaths and verges etc. This distance limit should help reduce any dominating effects and discourage fences being set back from the curtilage boundary to permit more height. While Article 3(6) helps prevent high fences 'end on' to the highway, for clarity the term '*adjacent to the highway*' could be redefined to include such 'end on' means of enclosure and ensure their height is limited within the 3 metre distance also. This would still mean that planning permission would be required for 2 metre high fences etc around the rear garden of corner plots facing a highway, but this is not unreasonable to control highway safety and visual amenity impacts.
- 6.10 An alternative approach could apply to curtilages containing a building, where fuller control could be achieved by limiting to 1 metre in height any means of enclosure in front of the front of the building line facing a highway.
- 6.11 Based on the above review, changes that could be made, to ensure that Part 2 gives permitted development rights only to development not giving rise to these material planning issues, are to:
- add conditions relating to sloping land and where levels change between adjoining properties/land holdings and on field/highway boundaries; height of new development should relate to the lowest natural ground level;
 - define '*adjacent to the highway*' for the purposes of Part 2 to mean land within 3 metres from the back edge of the highway, as defined in Annexe 9 and clarify that this applies to means of enclosure running parallel to the highway as well as those 'end on' to it; the 1 metre height limit would apply to these areas;
 - limit the types of the materials used for '*means of enclosure*' to '*conventional/traditional materials*' under Class A; interpretation should specifically exclude waste and certain types of materials such as old car tyres and define what conventional/traditional excludes or includes;
 - clarify that demolishing and replacing a whole wall/enclosure is not permitted development under Class A; this is addressed under Part 31;

- amend Class B to limit the length of a means of access and add a condition to allow only a temporary means of access to be provided to serve a temporary use;
- clarify that Class B gives permitted development rights for creating a means of access across a public pavement, as part of the highway;
- ensure that railings on roof terraces/gardens/decking are controlled within Part 1;
- exclude from permitted development rights, in both Parts 2 (Classes A and B) and 31, the creation of a gap in a wall, fence or means of enclosure adjacent to a highway in conservation areas, to provide a means of vehicular access; and
- restrict Class C in conservation areas and where a building is listed. While such painting would require listed building consent if it affects the character of the building, this change would avoid the need for such interpretation.

6.12 More detailed consideration is necessary for the problem of speculative sub-division and enclosure of small plots on agricultural land or other greenfield land. While a number of adverse forms of development take place on these plots, the main use of permitted development rights appears to be provision of enclosures under Part 2. While a specific restriction within Part 2 is possible, there may be attempts to utilise other Parts of the GPDO and there may also be a need for a range of other measures to fully address this problem. For these reasons, this issue is dealt with under the general changes in Chapter 39.

6.13 All these suggested changes would achieve a widely desired local authority outcome of requiring planning permission in conservation areas for front gardens to be used for car parking, without having to resort to Article 4 Directions. They would also limit the scale of a new, private means of access i.e. long driveways currently being developed across open countryside which are often to serve new hardstanding at dwelling-houses, or farm buildings. They would also permit only temporary means of access to serve temporary uses such as car boot sales.

6.14 These changes would contribute positively to Government policy aims relating to sustainable development, the protection of the countryside and achieving design quality. They would result in increased local authority workloads, counterbalanced by very considerably less time being spent investigating alleged breaches of GPDO planning controls, as well as the time taken and resources used on enforcement actions that sometimes result.

6.15 Recommended changes are to:

- a. **amend Part 2 Classes A and B to exclude works on previously undeveloped land or land that was formerly part of an agricultural holding, combined with a limit on the size of plot and a specific restriction where the works are not reasonably required for agricultural purposes;**
- b. **add conditions relating to sloping land and where natural ground levels change between adjoining properties/land holdings and on field/highway boundaries, the height of new development should relate to the lowest natural ground level;**

- c. **define ‘*adjacent to the highway*’ for the purposes of Part 2 to mean land within 3 metres from the back edge of the highway, as defined in Annex 9 and clarify that this applies to means of enclosure running parallel to the highway as well as those ‘end on’ to it; the 1 metre height limit would apply to these areas;**
- d. **limit the types of the materials used for ‘*means of enclosure*’ to ‘*conventional/traditional materials*’ and specifically exclude the use of waste materials;**
- e. **amend Class B, to limit the length of a means of access and add a condition to allow only a temporary means of access to be provided to serve a temporary use;**
- f. **ensure that railings on roof terraces/gardens/decking fall within Part 1;**
- g. **make it clear that alterations involving demolishing and replacing a whole wall/enclosure, or creation of a gap in a front wall etc. to provide a means of access are not permitted development under Classes A and B adjacent to a highway in conservation areas; and**
- h. **restrict Class C (painting of buildings) in conservation areas and where a building is listed.**

Table 2: Assessment of recommendations for change to Part 2 of the GPDO

Proposed changes to Part 2	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>XX Use of e.g. waste can cause harm to the environment in all locations.</p> <p>X Contrary to good design objectives.</p> <p>X Contrary to PPG13 objectives to reduce car travel.</p>	<p>– Some enforcement actions necessitated.</p>	<p>√ Flexibility in enclosing/accessing private land.</p>	<p>X Harm to character of urban, rural and historic areas.</p>	<p>Flexibility for landowners can lead to significant and harmful effects on amenity and the environment.</p>
1. Add conditions relating to sloping land/where levels change.	<p>√ Support amplification of planning system.</p>	<p>√ Fewer enquiries regarding pd.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Helps maintain character of local areas.</p>	
2. Clarify height limits in relation to distance from a highway.	<p>√ Support protection of environment in residential areas or generally e.g. in rural areas.</p>	<p>X Small increase in no. of planning applications.</p>	<p>X Restricts householder/landowner flexibility in enclosing land in ownership.</p> <p>√ Protects character of residential, historic and rural areas.</p>	<p>√√ Reduces unsightly boundary treatments.</p> <p>√ Protects character of residential, historic and rural areas.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Changes recommended.</p>
3. Limit to use of conventional materials.					
4. Amend Class B, to limit length of means of access; and require temporary provision for temporary uses.					

Table 2: continued

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
5. Control demolition of walls etc. in conservation areas.	√ Supports substantiality aims e.g. to reduce car parking.	X Increase in number of planning applications.	X Restricts householder/land owner's flexibility in adapting property e.g. to provide car parking.		Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities. Changes recommended.
6. Restrict Class C in conservation areas and for listed buildings.	√ Supports protection of historic environment.	X Increase in number of planning applications.	X Restricts householders' flexibility.	√ Protects character of local area. √ Protects character of historic buildings/areas.	Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities. Changes recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 7

Part 3: Change of use

- 7.1 Part 3 permitted development rights originate in the Use Classes Order 1987, and grant permission for changes of use between certain of its classes:
- Class A permits changes of use from Use Class A3 (food and drink), or from the sale/display of motor vehicles, to Class A1 (shops).
 - Class B permits change of use from Class B2 (general industrial) or B8 (storage and distribution) to Class B1 (business), and from B1 or B2 to Class B8, subject to any change to or from B8 being for an area of less than 235 m².
 - Class C permits changes of use from Class A3 to A2 (financial and professional services), and Class D from A2 to A1 where there is a ground floor window display.
 - Class E permits development consisting of a change of use of a building or other land from a use permitted by planning permission granted on application, to another use which that permission would have specifically authorised when it was granted. Such development would not be permitted if carried out more than 10 years after the grant of permission or if it would be in breach of the planning permission.
 - Class F permits, subject to conditions, various changes of use to mixed uses, including from Class A1 to Class A1 and a single flat, from Class A2 to Class A2 and a single flat, and from Class A2 to Class A1 and a single flat.
 - Class G permits the same changes in reverse, providing that the flat was previously in A1 or A2 use.
- 7.2 These are all designed to be one way changes, with the underlying purpose being to permit changes of use which are likely to result in a use which is more desirable in planning terms. Class E makes it easier for local authorities to grant flexible planning permissions i.e. which authorise alternative possible uses.
- 7.3 A review of the Use Classes Order of the GPDO in 2001⁵ found that the loss of industrial uses to B1 offices was affecting employment and mixed use aims. It recommended various changes within the A1 and B1 use classes, including making a separate B1(c) use class and permitting moves from B2 to B1(c) rather than to B1 generally (see Annexe 5).

5 Review of the Use Classes Order and Part 4 of the GPDO, DETR, 2001.

ISSUES

- 7.4 Almost 40% of responding local authorities indicated that Part 3 permitted development gave rise to some problems or adverse impacts while 14% indicated some difficulties in interpreting this Part. Some 81% of planning authorities expressed a view on whether Part 3 rights were too restrictive or otherwise. Of those, the majority (68%) considered them about right, 27% as too loosely defined, and only 5% as too restrictive.
- 7.5 Although the Use Classes Order was the subject of a DETR Consultation Paper issued in 2002 (which is soon to be the subject of a Government announcement on how its proposals are to be taken forward), certain limited but frequent concerns regarding Part 3 were raised in consultation responses, relating to:
- a lack of control over changes with possible environmental consequences, as changes from B2 (general industrial) to B1 (business) can result in additional people on a floodplain, and consultation with the Environment Agency could provide scope for remediating any contamination;
 - the loss of small light industrial uses from local areas through conversion to B1 offices, leading to loss of local jobs and longer journeys for e.g. car repairs;
 - the loss of rural public houses resulting from changes from A3 to A2 and A1 uses;
 - the change of car showrooms in out-of-centre locations to Class A1, contrary to the advice of PPG6;
 - traffic problems from changes allowed from B2 to B8 uses, even with the 235 m² limit; and
 - the permitted development rights for flats over shops/A2 uses are unclear, particularly for changes from two flats to one, and ground floor residential use encroaching on the retail element, to the possible detriment of core retail areas in particular.
- 7.6 An assessment of the benefits and deficiencies of the current rights under this Part, in terms of policy aims and effects on key stakeholders, is set out in Table 3.
- 7.7 **No changes are recommended to this Part, which is beyond the scope of this study.** The ODPM is currently considering, in the light of their 2001 consultation, possible changes to the Use Classes Order, having announced in August 2002 that current temporary use provisions would remain unchanged.

Table 3: Assessment of recommendations for change to Part 3 of the GPDO

Proposed changes to Part 3	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	X Can be conflict with policies to promote town centres as foci for varied activities, or/and regeneration depending on location.	√ Fewer applications.	√ Feasibility to adjust eg to consumer spending changes.	X Can affect vitality and viability of a central area.	Benefits in terms of flexibility for use of premises can be counterbalanced by potentially harmful effects on town centres.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 8

Part 4: Temporary buildings and uses

- 8.1 Class A permits, subject to conditions, the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining it. These rights are frequently used for temporary storage and plant during construction works and for construction camps by statutory undertakers laying a pipeline, for example.
- 8.2 Class B permits the temporary use of any land for any purpose for not more than 28 days in total in any calendar year. No more than 14 of these 28 days can be for a market or motor car/cycle racing. The provision on the land of any moveable structure for the permitted use has to comply with the same time limits. Development is not permitted if the land is a building or within the curtilage of a building, or if for a caravan site. Specific restrictions apply within an SSSI, with use of land for motor sports, clay pigeon shooting, a war game or for advertisement display not permitted. No special restrictions apply in designated areas such as Article 1(5) or 1(6) land.
- 8.3 A review of the Use Classes Order and Part 4 of the GPDO in 2001 proposed removal of permitted development rights for temporary uses, with such uses only to take place on land with planning permission for such use (see Annexe 5).

ISSUES

- 8.4 A relatively high proportion of responding local authorities (44%) indicated that Part 4 permitted development gave rise to some problems or adverse impacts, with 25% indicating some difficulties in interpreting this Part. Some 80% of planning authorities expressed a view on whether Part 4 rights were too restrictive or otherwise. Of those, approximately half considered them about right, but only a slightly smaller proportion (45%) saw them as too loosely defined, and only 5% as too restrictive. Specific concerns are highlighted below.
- 8.5 Class A was cited as being *'too vague'* about temporary buildings associated with construction work and it being difficult to establish that such buildings are being so used. The wording of the Class also appears to allow for abuse by e.g. a landowner or anyone else living in a caravan or temporary building in the Green Belt or on a previously undeveloped site in the countryside for a period of years, whilst only slowly progressing an authorised building project. This type of action, it is claimed, leaves the local authority vulnerable to subsequent claims for a certificate of lawfulness for an established residential use. There is also no limit on the period of time

allowed for construction works. In contrast, Class A is argued by users as being too narrowly defined in excluding e.g. temporary compounds not immediately adjacent to pipeline schemes.

8.6 Problems arising from Class B, which allows a wide variety of temporary uses, some of which can have a significant impact on the built and natural environment, are far more numerous and varied in type and scale, including the following concerns:

- there is not enough protection from temporary uses in sensitive areas, such as AONBs and National Parks;
- the resulting markets and car boot sales can be in the Green Belt and/or on open fields, with '*huge impacts*' of noise and disturbance on a locality. These can cause '*severe disturbance*';
- the nuisance from clay pigeon shoots, war games and motor sports can also all be of considerable scale;
- there are no provisions for remediation after the temporary use has ceased;
- scope for abuse and misuse arises e.g. from car boot sales moving from field to field to allow these uses for more than 14 days in a year;
- temporary uses can occur an excessive number of times in a year (14 and 28 days);
- helicopter trip movements, using Part 4 rights to provide landing areas, have a regular adverse impact on amenity, especially in areas attractive to tourists;
- there are significant difficulties for local authorities in knowing whether a developer intends an activity to be temporary or permanent;
- the traffic implications of temporary uses can be significant; and
- there are difficulties for local authorities in accurately monitoring the number of days that car boot sales/markets have taken place, leading to difficulties in taking enforcement action.

8.7 By way of contrast, responses from other permitted development right users complained of no provision in Part 4 for e.g. commercially necessary temporary storage for retailers at peak trading periods, required for both fewer than and more than 28 days but having a minimal impact due to the siting within the curtilage of the building e.g. storage of Christmas goods or marquees in delivery yards or car parks.

8.8 An assessment of the benefits and deficiencies of the current rights under this Part, in terms of policy aims and effects on key stakeholders, is set out in Table 4.

8.9 **No changes are recommended to this Part, which is beyond the scope of this study.** Following its review of temporary uses and subsequent consultation, in July 2002 the Government announced that no changes would be made to the current provisions for Part 4 permitted development rights.

Table 4: Assessment of recommendations for change to Part 4 of the GPDO

Proposed changes to Part 4	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>X Damage to e.g. biodiversity of rural land.</p> <p>X Can undermine attractiveness of rural environment generally and in Green Belt/sensitive areas particularly.</p>	<p>X Difficult to monitor days pd used and to enforce.</p>	<p>√√ Create additional income through farm diversification.</p> <p>√ Flexibility to try new uses.</p>	<p>X Noise pollution and traffic impact.</p>	<p>Flexibility and diversification benefits have to be balanced against potential harm to environment and difficulty in monitoring for Lpas.</p>

√ indicates positive impact from √ (low) to √√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 9

Part 5: Caravan sites

- 9.1 This Part allows mainly temporary use of land for caravans and related infrastructure for them. Planning and licensing control over caravan sites is complex and the two areas are closely inter-related.
- 9.2 Class A permits the use of land as a caravan site in circumstances specified in the Caravan Sites and Control of Development Act 1960. Schedule 1, paragraphs 2-10 of this Act lists cases where a caravan site licence is not required and for which permitted development rights therefore apply under Part 5. These cases are:
- use by a person travelling with a caravan for 1 or 2 nights (up to a total of 28 days per year, for any one piece of land or adjoining land);
 - use of holdings of 5 acres or more for up to 3 caravans for not more than 28 days;
 - sites occupied and supervised by an exempted organisation for recreational use for up to 28 days at any one time;
 - sites approved by exempted organisations, for up to 5 caravans at a time for recreational purposes and in accordance with a certificate for a period not exceeding 1 year;
 - meetings for members organised by exempted organisations, lasting up to 5 days;
 - caravans for farming and forestry workers;
 - building and engineering sites; and
 - travelling showmen.
- 9.3 Class B permits development required by the conditions of a site licence in force under the same Act. Such conditions can require '*adequate sanitary facilities*', services and equipment. These might include lavatory/shower/laundry blocks, roads, hardstanding, footpaths, street lighting, fire and water points, recreation areas, electrical installations and foul and surface water drainage.
- 9.4 Permanent caravan sites require planning permission, and caravans or mobile homes on them (i.e. '*park homes*') do not have permitted development rights. In the past, this situation has been seen as being unfair to park home residents, when compared to the permitted development rights available under Part 1 for dwelling-houses.

ISSUES

- 9.5 Approximately 15% of responding local authorities indicated that Part 5 permitted development caused them some problems while 11% indicated some difficulties in interpreting this Part. Some 52% of planning authorities expressed a view on whether Part 5 rights were too restrictive or otherwise. Of those, the majority (58%) considered them about right, 31% as too loosely defined, and 11% as too restrictive. The following specific concerns were raised:
- the definition of ‘*caravan site*’ is now too loosely interpreted, as large mobile i.e. park homes and chalets can come within Part 5 and have a major impact;
 - confusion is caused by the cross-reference to the Caravan Sites and Control of Development Act 1960;
 - Class A is misused/abused, with caravan rally sites being in use continuously and throughout the summer, in conflict e.g. with Green Belt policy to protect the openness of such land;
 - local authorities have difficulty in distinguishing between rallies of bona fide organisations and touring operations;
 - some confusion between the rights under Part 5 and for exempted organisations under Part 27; and
 - there are inconsistencies in the GPDO generally, where some permitted development rights but not others are withdrawn where they affect sensitive areas; for example, caravan sites under Part 5 can locate adjacent to an SSSI.
- 9.6 No cases were identified of Article 4 Directions or EIA regulations being used to restrict Part 5 rights.
- 9.7 The users of Class A permitted development rights argue strongly that they operate well in terms of caravan rallies, providing a very useful, short term holiday facility which meets specific needs at certain times and in certain locations, which can be throughout the year. Likewise, Class B is seen as being of fundamental importance to all residential mobile home parks, and holiday and touring caravan parks. These users contend that if current rights were reduced or withdrawn, it would cause hardship and delays on all those existing caravan parks proposing upgraded or replacement development, as required by the conditions of their site licences. Users also argue that, as the principle of an existing caravan park has been accepted, then all on-site development required by the conditions of the site licence should continue to have permitted development rights.
- 9.8 DEFRA has issued ‘*A Guide To Touring Caravan Exemption Certificates*’ (2002) to all participating organisations. Exemption certificates are statutory and exempt caravanning organisations meeting certain requirements from the need to obtain planning permission and a site licence. A certificate can be used by the named organisation on the certificate in any part of Great Britain. Local planning authorities are consulted then on sites to be used for up to 28 days before their use, and advised of those which have been issued with a certificate for up to 5 caravans. The Guide refers to special arrangements having been established by caravanning organisations for

meetings in National Parks. It makes it clear that National Park Rally Co-ordination Centres must be notified of any intentions to meet in National Parks by 30 May of the year before the intended rally.

- 9.9 With regard to park homes, in its November 2001 response to the Park Homes Working Party Report (2000), the Government agreed to consider the potential implications of amending the GPDO to allow minor additions to park homes (conditional on such additions being approved by the park owner and being consistent with site licence conditions). The Government's response however also stated that,

“The Government's initial view is concern about the visual impact which a relaxation of the current controls might have. It is thought that a change of rules would make parks even more conspicuous as well as permanent features of the landscape. The Government appreciates, however, the fact that mobile homes are often already just as ‘permanent’ as bricks and mortar housing, and that they can be less visually intrusive than other housing types. Many would take the view that minor additions such as porches can sometimes add to the amenity of a site rather than detract from it. We recognise, however, that a relaxation of the rules could have implications for the wider planning treatment of park homes and other dwellings.”

- 9.10 No issue was raised with reference to park homes in any consultation response or interview.

SCOPE FOR CHANGE

- 9.11 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 5 and discussed below.
- 9.12 With reference to Government policy objectives, Part 5 permitted development rights viewed in isolation would appear to be in conflict principally with those for achieving sustainable development goals, countryside protection, good design quality and a reduced need to travel. Such conflicts could be argued as outweighing any support Part 5 gives for tourism, recreation and rural diversification aims. However, there is no clear evidence of problems caused by the current system, as it is apparently generally well controlled by the certification system referred to above.
- 9.13 Suggested amendments to Part 5 could, however, include:
- removal of Part 5 permitted development rights in and immediately adjacent to sensitive areas e.g. Article 1(5) land and SSSIs;
 - limiting the numbers of caravans involved in activities and meetings organised by exempted organisations;
 - a limit to the total number of meetings of less than 5 days that can occur in any year on one holding; and
 - revision of Class A's reference to building and engineering sites, to include caravans used by construction workers on any compound relating to pipeline works.

- 9.14 Bearing in mind the location of park homes, often in attractive, open and sensitive coastal and rural areas, and the density of such developments, it is not considered that giving Part 1-type permitted development rights would be appropriate. Even where located outside sensitive areas, improving design quality should remain an objective in line with Government policy for built development. Nor should Part 5 apply, as this is only intended to deal with temporary caravan sites, or the ancillary buildings associated with those benefiting from having a site licence (and planning permission).
- 9.15 The following definitions also need to be included in the GPDO to help interpretation of Part 5: *'caravan site'*; *'caravan'*; *'mobile home'*; and *'chalet'*.
- 9.16 The GPDO User Guidance document should explain clearly the relevant provisions of the Caravan Sites and Control of Development Act 1960 and exemption certification. It also needs to explain each of paragraphs 2-10 of Schedule 1 of the 1960 Act in greater detail, to reduce the scope for very wide interpretation by users.
- 9.17 A more radical change for consideration would be to exclude all Class A permitted development rights for caravan sites relating to exempted organisations from the GPDO. However, to avoid onerous restrictions on those exempted organisations' rights under Part 27, this restriction would only apply to over 5 caravans on a site. It would then be necessary for the owner of the land used by such organisations to obtain planning permission for a permanent, intermittent caravan site use, for which a licence would still not be required. This would be on the basis of pursuing design quality and PPG13 objectives seeking to promote non-car modes of transport. Permitted development rights for caravan sites for seasonal use for agricultural or forestry workers and for building and engineering sites should be retained.
- 9.18 Similarly, Class B permitted development rights for facilities required by a site licence would appear to be in direct conflict with Government aims to influence and improve design quality. Unattractive buildings and other development can clearly result from this Class, as there are no detailed design controls that can be applied. Thus, there is a case for also excluding permitted development rights in Class B from a revised GPDO and on this basis and the Government's recent conclusions, no case for giving new permitted development rights to park homes.
- 9.19 None of these recommended changes should have major workload implications for local authorities and, although they would bring more caravan sites under planning control, this would be to the overall benefit of the wider environment, particularly in relation to design quality and PPG13 objectives.
- 9.20 Recommended changes are:
- a. **the removal of permitted development rights in and immediately adjacent to sensitive areas;**
 - b. **limiting the numbers of caravans involved in activities and meetings organised by exempted organisations;**
 - c. **a limit to the total number of meetings of fewer than 5 days that can occur in any year on one holding; and**

- d. **revision of Class A's reference to building and engineering sites, to include caravans used by construction workers on any compound relating to pipeline works.**

9.21 A more radical change to be considered is to exclude all Class A rights for caravan sites for exempted organisations involving over 5 caravans on a site. It would then be necessary for the landowner to obtain planning permission for a permanent, intermittent caravan site use. Similarly, Class B could be excluded from a revised GPDO.

Table 5: Assessment of recommendations for change to Part 5 of the GPDO

Proposed changes to Part 5	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>X Can undermine attractiveness of rural environment, particularly sensitive areas.</p> <p>X Damage e.g. to biodiversity.</p> <p>X Contrary to reducing need to travel e.g. by car.</p>	<p>X Difficult to monitor events.</p>	<p>√√ Create additional income through farm diversification.</p>	<p>X Traffic impact.</p> <p>√√ Support for local tourism.</p>	<p>Potential for harmful impacts but have to be counterbalanced against benefits for local rural economies.</p>
1. Removal of pd in immediately adjacent to sensitive areas.	<p>√√√ Supports protection of special rural character/ biodiversity/ sustainability aims for use of natural resources.</p>	<p>X Likely increase in no. of planning applications and enforcement action.</p> <p>X Harm to rural economy re: tourism.</p>	<p>X Perception of increased regulatory burden.</p> <p>Harm to rural economy re. tourism.</p>	<p>√√√ Protects character of sensitive areas.</p> <p>X Harm to tourism industry.</p>	<p>Significant net positive contribution to policy aims and affected parties with some adverse impacts on users and local authorities being outweighed.</p> <p>Change recommended.</p>
2. Introduce a prior notice procedure for events.	<p>√ Increases transparency of planning system.</p>	<p>X Increase in workload monitoring events, possibly leading to increased enforcement action.</p> <p>√ Better control/increased knowledge of events.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Information regarding potentially detrimental events available in advance to public.</p>	<p>Net positive contribution to policy aims and affected parties but with some adverse impacts on users and local authorities being outweighed.</p> <p>Change recommended.</p>

Table 5: *continued*

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Limit the no. of caravans involved in no. of meeting activities by exempted organisations.	√ √ Supports protection of rural character. X Harm to tourism objectives.	X Small increase in planning applications.	X Perception of increased regulatory burden. X Harm to rural economy.	√ √ Protects character of local areas. X Harm to tourism industry.	No significant net positive contribution to policy aims and affected parties with some adverse impacts on users and local authorities being outweighed.
4. Include caravans for construction workers on pipelines.	√ Encourages economic prosperity.	√ Fewer planning applications.	√ Reduced regulatory burden.	X Temporary undermining of character of local land.	Net positive contribution to policy aims, users and local authorities. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 10

Part 6: Agricultural buildings and operations

- 10.1 This Part allows various forms of agricultural related development with a distinction between small and larger farm holdings. This distinction dates from 1992, when prior notification was additionally required for most agricultural development on units of over 5 ha. Before then, although agricultural permitted development rights had been relaxed in the past (e.g. in 1950), controls had been maintained in National Parks and fringe areas, using prior notice and approval procedures.
- 10.2 Class A of Part 6 therefore applies to developments on units of 5 ha. or more. It permits the carrying out of works for the erection, extension or alteration of a building; or any excavation or engineering operations. All have to be *'reasonably necessary'* for the purposes of agriculture within that unit. Development is not permitted if:
- a. on a separate parcel of land less than 1 ha.;
 - b. it relates to a dwelling;
 - c. it is not designed for agricultural purposes;
 - d. the ground area of any works, structure, or building erected, extended or altered would exceed 465 sq. m;
 - e. the height within 3 Km. of an aerodrome exceeds 3 metres or elsewhere 12 metres;
 - f. within 25 metres of the metalled part of a trunk or classified road;
 - g. a building for livestock or storage of slurry/sewage sludge within 400 metres of the curtilage of a protected building; and
 - h. excavations or engineering operations on Article 1(6) land connected to fish farming.
- 10.3 Development under Class A is permitted subject to an extensive list of conditions including:
- A.2(1) a. the accommodation of livestock or storage of slurry and sewage sludge, where there is nowhere else suitable, can be within 400 metres of a protected building;

- b. minerals extracted or removed must not be moved off-site; and
- c. waste materials can only be brought on-site for Class A(a) development or to provide a hard surface and they must be incorporated *forthwith*.

10.4 Further conditions apply on Article 1(6) land and elsewhere only if the extension or alteration is significant; *'significant'* development may only be carried out once under Class A (a) and is defined as exceeding 10% of the cubic content of the original building or its original height. Thus development consisting of the erection, extension or alteration of a building, the formation or alteration of a private way, excavations or the deposit of waste or the placing/assembly of a tank in any waters on Article 1(6) land, or elsewhere if *'significant'* is subject to the following conditions, requiring:

- i. an application to the local planning authority for a determination as to whether prior approval is required for siting, design, external appearance, or means of construction *'as the case may be'*;
- ii. the application to be accompanied by certain supporting information; and
- iii. development not to be begun before one of the following:
 - aa. notification that prior approval is not required;
 - bb. the giving of approval within 28 days, if this timetable has been given by the local planning authority; or
 - cc. the expiry of 28 days if the local planning authority has not determined whether such approval is required or not notified the applicant of their determination.
- iv. where approval is required, a site notice to have been displayed;
- v. the development to be carried out in accordance with, where required, prior approval details (aa), or in accordance with the application details (bb); and
- vi. the development to be carried out within 5 years of prior approval being given (aa), or the date when information was submitted to the local planning authority for prior approval (bb).

10.5 Under condition A.2(5), where development has been for works relating to a building and its use for agriculture permanently ceases within 10 years from substantial completion, and planning permission has not been granted/deemed to be granted for development for purposes other than agriculture within 3 years from the date when the use for agriculture permanently ceased, the building has to be removed and land restored to its previous condition *'so far as is practicable'*, unless the local planning authority has agreed otherwise in writing. An appeal against refusal extends the time allowed. A condition requires written notification of the date on which development was *'substantially completed'*.

- 10.6 Class B is for development on smaller farm units between 0.4 and 5 ha. and permits:
- a. extension or alteration of an agricultural building;
 - b. installation of plant or machinery;
 - c. provision of or changes to a sewer or cable etc;
 - d. provision or changes to a private way;
 - e. provision of a hard surface;
 - f. deposit of waste; and
 - g. works in connection with fish farming.
- 10.7 Development is not permitted by Class B in similar circumstances to those for Class A and these additionally require the external appearance of the premises not being materially affected. Class B(a) development is not permitted specifically if certain size and distance criteria are not fulfilled e.g. if any part of a new building would be more than 30 metres from the original building, or the ground area would exceed 465 m². Restrictions on Class B(b) development are also imposed e.g. relating to height, and area not exceeding 465 m². Likewise, development is not permitted by Class B(e) if the area covered would exceed 465 m² As for Class A, a condition limits development for livestock accommodation and slurry/sludge storage within 400 metres of the curtilage of a protected building.
- 10.8 Development on Article 1(6) land for extension or alteration of a building, or relating to a private way is allowed but subject to the same prior approval procedures as Class A.
- 10.9 Development is permitted by Class B(f) if waste materials are brought on-site for works in Class B(a), (d) and (e) and incorporated '*forthwith*', providing that the height of the land is not '*materially increased*' by the deposit. Removal and restoration of buildings or extensions is required, as for Class A, if agricultural use permanently ceases.
- 10.10 Class C permits the winning and working on land used for agriculture of any minerals '*reasonably necessary*' for agricultural purposes within the unit of which it forms part. Excavation must again not be within 25 metres of a metalled part of a trunk or classified road.
- 10.11 Agricultural permitted development is subject to the EIA Regulations, as stated in Article 3.
- 10.12 A 1995 Government research study considered Part 6 permitted development rights as part of a wider investigation of the operation and effectiveness of planning controls over agricultural and forestry developments.⁶ While concluding that the prior approval process was generally working well, it identified several problems:

⁶ Planning Controls over Agricultural and Forestry Development and Rural Building Conversions, DoE, 1995.

- uncertainties among local authorities on how the prior approval procedure should operate in detail, difficulties in meeting the 28 day timescale and inconsistency between authorities in operating it;
- difficulties in interpreting Part 6 such that some developments with no agricultural justification were allowed under these rights; and
- there was little genuine agricultural activity on holdings under 5 ha.

10.13 Recommendations included reviewing Part 6 Class A to provide greater clarity on what types of developments are permitted development and what restrictions apply; making hardstandings over 465 m² subject to the prior approval process; continuing to make prior approval apply to forestry developments; and increasing the prior approval determination fee (Annexe 5).

ISSUES

10.14 Local authority consultation responses show a high level of criticism of Part 6 and its prior notification/approval procedures. This Part is most frequently cited as being overly-complex and inconsistent with Government policy for sustainable development; for safeguarding the character of the countryside; the Green Belt; development in flood plains; access; and the waste strategy.

10.15 Taking account of the number of non-rural authorities, a high proportion (53%) of responding planning authorities indicated that Part 6 permitted development caused them some problems while 55% indicated some difficulties in interpreting this Part. Some 73% of planning authorities expressed a view on whether Part 6 rights were too restrictive or otherwise. Of those, the great majority (68%) considered them to be too loosely defined, while 27% considered them about right, and only 5% as too restrictive. Specific concerns raised by the responding planning authorities regarding Part 6 were:

- i. the rights undermine the statutory purpose of Article 1(5) land;
- ii. any proposal under Part 6 has to be '*reasonably necessary for the purposes of agriculture*' and it is difficult for a local planning authority to confirm this, without e.g. submission of an assessment of need, a business plan or a '*Whole Farm Plan*';
- iii. the growing Government support for farm diversification, changing land ownership structures and farm management all point to permitted development rights for agricultural development becoming increasingly difficult to use and regulate;
- iv. due to current economic circumstances in which agriculture is seen to be '*in recession*', very substantial buildings of poor design quality are resulting e.g. through the re-use of dismantled second-hand buildings taken from elsewhere;
- v. on land of up to 5 ha., '*bobby farmers*', '*borsiculture*' and other non-agricultural uses are seen as causing significant planning problems on these smaller landholdings, particularly on urban fringes and in sensitive areas, due to their use of agricultural permitted development rights despite not engaging in agricultural activities and the ensuing problems associated with enforcement;

- vi. a lack of clarity regarding the ability to carry out excavations or engineering operations for the purposes of agriculture;
- vii. Class B effectively permits development anywhere within 30 metres of the original building but development in a certain direction may not always be acceptable and local planning authorities are not able to exert any control over such development;
- viii. agricultural permitted development rights and the prior approval procedure prevent the consideration of wider issues, such as location and need. There is no scope for formal consultation e.g. with the public, parish councils or the Environment Agency. Thus proposals are not looked at *'in the round'* and not subject to proper scrutiny, nor is there any scope formally for mediation and mitigation;
- ix. Part 6 fails to recognise how difficult it is to remove buildings, even when conditions to do so are attached, based on development plan policies;
- x. the status of other conditions attached to approvals is uncertain and they are notoriously difficult to enforce e.g. landscape maintenance;
- xi. incremental growth by way of a series of small scale buildings added to farmsteads produces a proliferation of buildings etc. which are then sometimes disposed of without any land, leading to further buildings being sought on the open land (followed by subsequent planning applications for dwellings);
- xii. implementing Part 6 rights can lead to other harmful environmental effects e.g. loss of trees, hedges, damage to walls to create access etc.;
- xiii. the importation of waste (including inert waste, *'green'* waste such as paper pulp and top soil) and uncertainty as to whether its scale and nature brings it under planning controls;
- xiv. the provision of a new agricultural building enabling higher productivity can lead to the unacceptable intensification in use of farmland, which cannot be controlled. This is a particular concern in one of the National Parks;
- xv. confusion arising between Parts 6 and 9, as it can be difficult to determine under which Part changes to a farm track might be being implemented e.g. in relation to whether an existing private way is being improved or a farm private way is being formed or altered;
- xvi. users exploit Part 6 rights when mineral exploration rights are subject to an Article 7 Direction, to proceed with excavation or engineering operations on agricultural land; they often cannot be stopped in time, and prevented from destroying historic landscape or other features e.g. in the National Parks or Scheduled Ancient Monuments;
- xvii. permitted development rights have not been sufficiently updated (either relaxed or made more restrictive), to reflect modern farming methods – particularly for the 465 m² limit to buildings and hardstanding, and the 400 metres distance from a protected building;

- xviii. it is difficult for some local authorities to determine prior approvals in the 28 day period, particularly if significant time is taken in determining whether the land in question is agricultural (and the use proposed is *'reasonably necessary'*);
- xix. older and often vernacular agricultural buildings are allowed to fall into disrepair, while farmers use their permitted development rights to put up new buildings.

Case Study 3:

In the North York Moors National Park, a livestock building was erected in an isolated area away from any dwellings following prior notification, since there were no grounds to contest the need for it, and no ability to request a whole farm plan. Subsequently, a proliferation of other buildings occurred beside the livestock building through a series of further prior notifications and planning applications, undermining the character of the National Park. The last of these, for a dwelling-house a worker to look after livestock, was allowed against officer recommendation – being harder to refuse once the livestock buildings existed.

- 10.16 The most commonly referred-to effect of agricultural permitted development rights in the survey and interviews is the perception of significant numbers of high, large scale, poor quality buildings being constructed in the countryside, particularly in the most sensitive areas. This may be an indirect result of the frequently observed problem of Part 6 complexity, and a lack of clarity and certainty created by the unwieldy prior notification/approval procedures. A number of respondents considered these difficulties could be addressed by simplification of the system to result in less complex and less extensive permitted development rights and, otherwise, a requirement for planning permission.
- 10.17 In direct contrast, responses of users and agricultural interest groups are that Part 6 rights, as well as Article 1(5) and (6) areas, are *'about right'* and fundamental change would not be welcomed. They considered that permitted development rights help deliver Government policy to maintain and enhance the rural economy, and that they improve the quality of the rural environment by helping to create a living, working countryside. There is, however, seen to be a conflict between national agricultural policy and development control. Local authorities are perceived as showing a lack of understanding of farming, taking too strict an approach to prior approval.

Case Study 10:

At Lockton, a planning application for the erection of a farmhouse in a National Park was granted after submission of three agricultural prior notifications and three planning applications. The original prior notification for an isolated livestock building was approved as there were no grounds to contest need and a whole farm plan could not be formally requested. Despite a recommendation for refusal, the case on need for the dwelling was accepted in terms of the value of the livestock herd being kept and the animals' welfare requiring someone to live on-site. The Park Authority had no grounds to argue that any of the buildings permitted after prior notification should be sited adjacent to the owner's farm and outbuildings nearby.

- 10.18 As for local authorities, the complexity of Part 6 is seen as confusing, for example in the very varied ways in which different local planning authorities require different standards of detail for prior notification and approval. Where used positively, prior notification changes to proposals are easier to negotiate and execute than with a planning application, as the required drawings are less sophisticated. The process is viewed as conducive to officer/farmer negotiation, with no public or political involvement. Farmers' organisations are also of the view that farmers recognise their responsibility to provide development of better design quality.
- 10.19 Perhaps ironically, the powers available to statutory undertakers in the countryside are perceived to be too wide, with no opportunity given to farmers to comment. Finally, the absence of any formal recording of the exercise of permitted development rights, where no prior notification is required, leads to problems arising from uncertain or unknown planning histories which under-resourced local authorities cannot investigate easily on-site when considering enforcement action.
- 10.20 Overall, the permitted development rights for Class B of Part 6 are seen as more comprehensive and clearer than those for Class A.

SCOPE FOR CHANGE

- 10.21 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 6 and discussed below.
- 10.22 Part 6 is clearly one of the most problematic parts of the GPDO, giving rise to a range of material planning issues. The desired outcome of Part 6 permitted development rights must be to permit farmers to proceed with modest development on their land, required to meet genuine and realistic agricultural (and countryside stewardship) needs. Such development must be in scale with and in the character of existing buildings, and not detrimental to the landscape, to amenity and the environmental quality of the land.
- 10.23 Particular regard also has to be paid to the Government's commitment to promote a more sustainable, competitive, environmentally-friendly and diverse agriculture industry, and to reduce, as far as possible, regulatory burdens on farmers given the present difficulties facing the industry.
- 10.24 From the consultation process, the public and local authority officers commonly expressed the view that they would like to see full planning controls replace Part 6 permitted development rights and the prior approval procedure, with a wide range of consultees questioning why farmers should have greater permitted development rights than other employment uses. Their view may in part result from the reduced fees applying to prior approvals and the resulting lack of resources available to local planning authorities for their determination, more than the inability to control design to any significant degree.
- 10.25 There is a perception by environmental interest groups concerned with rural conservation issues that new housing in the countryside is heavily controlled, whereas agricultural development is not. Also, there is a view that even if prior notification is required, approval will be given whereas if a planning application has to be made,

it will be refused. While farmers and their representatives in contrast seek retention of Part 6 permitted development rights and the prior approval procedure, it cannot be in the best interests of the farming industry for it to be subject to complex rules which are hard to understand and perceived as having *'to be got around'*. While the workload of development control officers may be reduced by Part 6 permitted development rights, that of enforcement officers is not and in rural areas it is extremely difficult to substantiate what is unauthorised development or when a building has ceased to be used for agricultural purposes. For this reason, the changes cited below merit further consideration, as enforcement cannot be relied on to meet wider Government land use planning and other policy objectives for the countryside.

- 10.26 Overall, if its permitted development rights are looked at in isolation, Part 6 cannot be seen as assisting Government policy aims of achieving a quality environment. These rights take away the tools necessary to achieve this. However, it must be recognised that agricultural permitted development rights contribute to another vital Government policy i.e. that of bolstering the rural economy and assisting farmers in meeting the numerous other Government and EU regulatory measures and farm assurance schemes e.g. for animal welfare and crop storage.
- 10.27 The argument against agricultural permitted development rights that older, often vernacular buildings are allowed to fall into disrepair, as new permitted development buildings are built nearby, is undermined by the requirements of these regulations and schemes, necessitating large, high well-ventilated buildings for livestock, and sealed storage for crops. This issue of consistency with EU regulations and grant schemes, however, leads to questions which are beyond the remit of this study i.e. first, whether such buildings most commonly exceed those allowed by permitted development rights (and if so, by how much) and have to be the subject of full planning applications anyway, and secondly, whether permitted development size limits could or should be increased accordingly.
- 10.28 Unfortunately, Government statistics on determinations of prior approvals do not differentiate between those for other Parts of the GPDO but it is interesting to note that only 2,239 prior approval determination applications were received by local planning authorities between April and June 2002, compared with a total of 158,000 planning applications. In only 18% of determinations was there a decision to intervene and this very small proportion could indicate that larger farm buildings that generally exceed permitted development rights are more common.
- 10.29 The different viewpoints could potentially be reconciled, at the local level, by the Government's proposed introduction of Local Development Orders as part of the new development plan (*'Local Development Frameworks'*) system, i.e. such Orders would relax nationally-defined permitted development rights for specific categories of development not raising issues in localised areas or for specific categories of agricultural development, where proposed in a development plan policy.
- 10.30 Some changes to Part 6 are therefore put forward at the national level. These seek to balance the potentially conflicting Government policy objectives of a buoyant rural economy, achieving farm diversification, protecting the rural environment, social inclusion, sustainable development and new development being of high design quality. These proposals are made subject to future quantitative research (outlined below). The possible changes are:

- i. exclude engineering operations (e.g. reservoirs) in areas of archaeological interest;
- ii. create a separate Class for certain agricultural uses, possibly to include mushroom farming, horticulture and/or other intensive (e.g. livestock uses), on smaller landholdings (e.g. of up to 20 ha.), and otherwise abolish permitted development rights on holdings below the specified size of holding, thereby creating two new Classes to replace the current ones;
- iii. prevent indefinite repeated implementation of small scale permitted development rights on the same farm holding e.g. by careful scrutiny of the need case to be required with prior approval;
- iv. change the prior approval procedure, as set out in Chapter 39, to:
 - extend the period to more than 28 days, to allow for neighbour/public consultation, parish council comments and Environment Agency input;
 - be a one stage procedure, with all details of siting, design and appearance submitted at the outset, with the time period only commencing when all details have been submitted; and
 - require all '*significant*' (to be defined by area and type) engineering operations and excavations to be subject to prior notification;
- v. provide clear guidance and make specific provision for conditions to be attached to prior approval decisions, covering colour, landscaping and its maintenance, archaeology etc;
- vi. ensure that permitted development rights only apply to development on an agricultural holding '*for the purposes of the agricultural undertaking*' by requiring evidence of this as part of the prior notification submission;
- vii. the floor area of the original farm buildings should be used as the basis for calculating permitted development rights, with a percentage increase relating to that floor area, rather than the 465 m² flat rate;
- viii. a condition of Part 6 should be that the external appearance of a building to be extended or altered should not be materially affected (or at least applying the '*no material increase in height*' conditions in Class B.2(a) to Class A);
- ix. permitted development rights only to apply to developments within 75m of the curtilage of the original farm buildings;
- x. control the length of farm tracks that can be provided (and restrict the provision of such tracks if to serve a temporary use); and
- xi. remove permitted development rights for '*the deposit of waste*' (from Part 6 Class B permitted development rights), and specifically exclude the importation of any waste material from engineering operations (in Class A). Condition A.2(1)(c) should refer also to waste materials moved on-site and delete reference to their use for provision of a hard surface.

- 10.31 If these changes were to be taken forward, further research would have to show that the measures were necessary, based on clear evidence of:
- detailed case studies confirming the detrimental effects or widespread abuse of certain agricultural permitted development rights and the prior notification procedure e.g. relating to the number and scale of buildings/extensions and their distance from the curtilage of original farm buildings, and to the importation of waste;
 - significant abuse by non-agricultural landowners etc. of Class B permitted development rights on holdings of less than 5 ha., and Class A permitted development rights on holdings of up to 20 ha.;
 - the minimum size of agricultural holding which can be viably operated as such. This may be as large as 50 ha., unless for an intensive agricultural use such as horticulture, mushroom or intensive livestock farming; and
 - the benefits, disbenefits and environmental consequences of giving permitted development rights to various intensive agricultural uses on smaller holdings, particularly in sensitive areas.
- 10.32 Part 6 should in any event be entirely redrafted, along similar principles proposed for Part 1, particularly to remove all its double negatives.
- 10.33 To ensure that towable buildings, containers, polytunnels and pig arcs were defined as development, change to primary legislation would be required. This is considered to be too restrictive a measure, in view of the additional burden it would place on farmers when frequently re-siting such structures and when they are currently deemed to be a use of land for agriculture.
- 10.34 The GPDO User Guidance document will need to provide very significant guidance on agricultural permitted development rights, particularly on assessing whether:
- the proposal is development;
 - the proposed development is for the purposes of the agricultural undertaking;
 - the interests of farmers and others are being properly balanced;
 - the development otherwise benefits from permitted development rights; and
 - the land is agricultural.
- 10.35 This guidance should also advise on:
- the level of detail of plans required for prior approval, and provide a checklist of other supporting information;
 - how non-statutory Whole Farm Plans, particularly in sensitive areas, can assist both farmers and local authorities in achieving rural and design policy objectives simultaneously;

- examples and good practice of how proposals can be designed to comply with landscape policy;
- avoiding harm arising from the proposals, on the basis of a set of strong, environmental criteria;
- encouraging the retention and re-use for agriculture of older buildings and otherwise for an alternative use i.e. a sequential approach to use should be incorporated (reflected from the proposed revised PPG7);
- encouraging local planning authorities to introduce specialist rural officers or farm liaison officers; and
- the relationship between permitted development rights and TPOs.

- 10.36 The User Guidance document's advice to local planning authorities on how to obtain information and to local authority members and farmers on how to improve dialogue will be essential. This Guidance could also provide a flowchart of Part 6 permitted development rights, if they are sufficiently simplified. In any event, the Guidance must closely reflect the soon-to-be revised PPG7. Local authorities should be encouraged via the User Guidance document to adopt a sympathetic approach to farmers' genuine needs e.g. by advising on preferable design and siting criteria in Supplementary Planning Guidance.
- 10.37 These suggested changes would ensure that a proliferation of unnecessary (in terms of agricultural needs) and unsightly development around a holding could be prevented, while development which was necessary in a particular location for genuine operational reasons would normally be allowed, providing that it was not unduly intrusive in the landscape or detrimental to environmental quality.
- 10.38 Where current permitted development rights were removed, provision could be made for reduced fees or fee exemptions for the first planning application made.
- 10.39 More radical and restrictive options for change in addition to or instead of those above, to respond to consultees' comments and intended to give more consistency with other commercial sectors, would be to:
- i. remove permitted development rights for excavations, '*significant*' engineering operations, new buildings and '*significant*' alterations and extensions, replacing them with a requirement to obtain planning permission. Other permitted development rights not currently subject to prior approval should be reassessed, in terms of whether they are sufficiently minor to remain as permitted development rights, or whether they should be subject of prior approval procedures (eg hardstanding);
 - ii. require '*need*' specifically to be taken into account in the prior approval process;
 - iii. require planning permission for all but the most minor Part 6 permitted development rights in the National Parks and adjoining parishes, the Broads and other sensitive areas.

- 10.40 These options are not however supported by evidence of widespread problems from this study and are therefore identified as options for further consideration based on the findings of suggested research, rather than recommendations, at this stage.
- 10.41 Whatever changes are taken forward, it must be recognised that the objective of achieving farm diversification should remain subservient to supporting and meeting the needs of the agriculture industry. Part 6 should support this latter objective. This is in spite of the fact that farm diversification may be the only way a farmer can keep the farm going at present and in the short term future. Nevertheless, farmers too need to recognise that significant change is underway in the industry, e.g. CAP restructuring and agri-environment schemes, requiring better business planning overall.
- 10.42 Overall, there is a clear need for change to Part 6 and the basic conclusion from the above is that, by way of a staged process, agricultural permitted development rights should be tightened in all areas, at a minimum and in the shorter term by restructuring the prior approval procedure and making various changes to Classes A and B. After an initial '*settling-in*' period, any increase in planning applications, prior notifications and approvals that would result from these changes would not be likely to increase local planning authority workload overall, as it would be counterbalanced by a corresponding decrease in the number of informal enquiries as to whether proposed development is permitted or not and enforcement actions necessitated from the complexity of current Part 6 provisions.
- 10.43 In the longer term, and if confirmed by further research, planning permission for all but the most minor development in sensitive areas, and for all new buildings or significant extensions/alterations (and excavations or engineering operations) elsewhere should be considered. Such change should only occur, however, if farmers can be assured that any planning application or prior approval would be processed expeditiously.
- 10.44 Both options, and any '*middle way*' alternative would at least ensure that Part 6 could be used to contribute positively to Government policy objectives for rural areas, albeit that these will remain in large part in conflict with one another and therefore irreconcilable. At least the suggested changes would allow Part 6 to go some way towards meeting those for design quality, sustainable development and social inclusion, with the more minimal changes favouring the interests of farmers.
- 10.45 Consideration was also given to widening permitted development rights, for example under Part 3 to allow changes of use of farm buildings, or to erect new buildings under Part 6 that would support farm diversification. However, this approach was rejected as likely to provide greater opportunities for abuse.
- 10.46 The planning system generally also has to become more in tune with farmers' needs, with local planning authorities not taking an urban preservationist perspective to ensure that the farmers have confidence in the planning application process being capable of delivering desired outcomes. The practical consideration of buildings needed for modern day farming, particularly in sensitive areas such as National Parks and AONBs, may be best addressed through the consideration of sustainable development and other issues on a case by case, planning application basis, rather than by applying blanket permitted development rules.

10.47 The recommended changes are:

- a. **exclude engineering operations (e.g. reservoirs) in areas of archaeological interest;**
- b. **create a separate Class for certain agricultural uses (possibly to include horticulture and/or other intensive uses) on smaller landholdings e.g. of up to 20 ha., and otherwise abolish permitted development rights on holdings e.g. of up to 20 ha., thereby creating two new Classes;**
- c. **prevent indefinite repeated implementation of small scale permitted development rights on the same farm holding;**
- d. **change the prior approval procedure, to require all ‘significant’ (to be defined by area and type) engineering operations and excavations to be subject to prior notification;**
- e. **ensure that permitted development rights only apply to development on an agricultural holding ‘for the purposes of the agricultural undertaking’ by requiring demonstration of this as part of the prior notification submission;**
- f. **the floor area of the original farm buildings should be used as the basis for calculating permitted development rights, rather than the 465 m² flat rate;**
- g. **a condition of Part 6 should be that the external appearance of a building to be extended or altered should not be materially affected (or at least applying the ‘no material increase in height’ conditions in Class B.2(a) to Class A);**
- h. **any reference to curtilage should relate to the curtilage of the original farm building(s), and a specified distance from them;**
- i. **control the length of farm tracks that can be provided (and restrict the provision of such tracks if to serve a temporary use); and**
- j. **remove permitted development rights for ‘the deposit of waste’ (from Part 6 Class B permitted development rights) and specifically exclude the importation of any waste material from engineering operations (in Class A). Conditions should refer also to waste materials moved on-site and delete reference to their use for provision of a hard surface.**

10.48 Subject to further evidence that such measures are necessary, more radical and restrictive changes in addition to or instead of those above, intended to give more consistency with other commercial sectors, would be to:

- a. **remove permitted development rights for excavations, ‘significant’ engineering operations, new buildings and ‘significant’ alterations and extensions. Other permitted development rights not currently subject to prior approval should be reassessed, in terms of whether they are sufficiently minor to remain as permitted development rights, or whether they should be subject to prior approval procedures (e.g. hardstanding);**

- b. **require ‘*need*’ specifically to be taken into account in the prior approval process; and**
- c. **require planning permission for all but the most minor Part 6 permitted development rights in the National Parks and adjoining parishes, the Broads and other sensitive areas.**

Table 6: Assessment of recommendations for change to Part 6 of the GPDO					
Proposed changes to Part 6	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√√ Farming needs can be met quickly i.e. support for rural economy.</p> <p>XX Do not help achieve a high quality rural environment e.g. by good design.</p> <p>XX Historic buildings may not be re-used and maintained.</p>	<p>XX Prior notification/approval process difficult to operate.</p>	<p>√√ Can provide buildings etc. without planning being a further regulatory burden.</p> <p>XX Complex Classes/conditions hard to understand.</p>	<p>XX Harm e.g. to visual amenity/attractiveness of countryside.</p> <p>√ Helps maintain environment by supporting economical prosperity of farming industry.</p>	<p>Part 6 allows farmers to undertake necessary development expeditiously but considerable potential for exploitation and harmful impact on rural amenity and landscape, and the environment.</p>
1. Exclude engineering operations in areas of archaeological interest.	<p>√ Protection of environment and historic landscape.</p> <p>√√ Supports protection of rural character.</p> <p>X Increased regulatory burden on farms as rural businesses.</p>	<p>X Small increase in no. of planning applications.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√√ Helps maintain and protect character of local rural area.</p>	<p>Net positive combination to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Change recommended.</p>
2. Prevent indefinite repeated implementation of pd.	<p>√√ Supports protection of rural character.</p> <p>X Limits scope for farmers to expand/adopt.</p> <p>X Increased regulatory burden on farms as rural businesses.</p>	<p>X Small increase in no. of planning applications.</p> <p>√ Opportunity to apply development plan policies.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√√ Helps maintain and protect character of local rural area.</p> <p>√ Opportunity to comment on more planning applications.</p>	<p>Net positive combination to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Change recommended.</p>

Table 6: *continued*

Proposed changes to Part 6	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Abolish pd on holdings of e.g. up to 20 ha., unless for an intensive agricultural use.	<p>√√ Supports protection of rural character/countryside.</p> <p>X Increased regulatory burden on some rural businesses.</p>	<p>X Likely increase in no. of planning applications counterbalanced in part by fewer enforcement actions.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√√ Helps maintain and protect character of local rural area.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Change recommended.</p>
4. Change prior approval procedure and specify conditions which can be attached.	<p>√√ Supports protection of rural character/countryside.</p>	<p>X Increased approvals but fewer enforcement actions.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Changes recommended.</p>
5. Control length of farm tracks.	<p>√√ Supports protection of rural character/countryside.</p> <p>√ Helps reduce travel by motorised transport.</p>	<p>X Increased no. of planning applications but fewer enforcement actions.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Change recommended.</p>
6. Use floor area based on original building to determine size of pd building(s).	<p>√√ Supports protection of rural character/countryside.</p>	<p>X Increased no. of planning applications but fewer enforcement actions.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Changes recommended.</p>

Table 6: continued

Proposed changes to Part 6	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
7. Add condition that external appearance of building should not be materially affected.	<p>√ Supports protection of rural character.</p> <p>√ Supports design aims.</p> <p>X Increased regulatory burden on farming as rural businesses.</p>	<p>X Difficult to enforce.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties, with limited adverse effects on users and local authorities.</p> <p>Change recommended.</p>
8. Pdrs only to apply within 75m of the curtilage of the original farm building.	<p>√√ Supports protection of rural character.</p> <p>X Increased regulatory burden on farming as rural businesses.</p>	<p>X Small increase in planning applications.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties, with limited adverse effects on users and local authorities.</p> <p>Change recommended.</p>
9. Prevent deposit of waste under Classes A and B.	<p>√√√ Supports sustainability aims to create a better rural environment.</p> <p>√√ Supports protection of rural character/countryside.</p>	<p>X Likely increase in no. of planning applications, but less enforcement action.</p> <p>- Brings waste disposal fully under LA/waste regulation control but additional workload in licensing.</p>	<p>X Perception of increased regulatory burden.</p>	<p>√ Helps maintain character of local rural areas.</p>	<p>Net positive contribution to policy aims and affected parties, with limited adverse effects on users and local authorities.</p> <p>Change recommended.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

Additional changes to consider: Assessment of recommendations for change to Part 6 of the GPDO

Proposed changes to Part 6	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
10. Abolish major pd and replace with requirement to obtain planning permission in all areas.	√√√ Supports protection of rural character. X May not support maintaining rural economy.	XX Likely increase in no. of planning applications and enforcement action.	X Perception of increased regulatory burden.	√√ Helps maintain character of rural areas.	Net positive contribution to policy aims and affected parties but with potentially significant adverse impacts on uses and local authorities. Merits further detailed consideration.
11. Require need specifically to be taken into account in prior approval.	√ Helps support contribution of genuine farming businesses to rural economy.	X Increase in workload in assessing 'need' and requirement for more specialist knowledge.	- Perception of increased regulatory burden but only to non-agricultural users seeking to exploit pd.	√ Maintains farming industry in the countryside and prevents unauthorised non-agricultural uses.	Net positive contribution to policy aims and affected parties but with potentially significant adverse impacts on users and local authorities. Merits further detailed consideration.
12. Require planning permission for all but most minor pd in sensitive areas.	√√√ Supports protection of sensitive areas from harmful development. X May not support maintaining rural economy.	- Likely increase in no. of planning applications but counterbalanced by less enforcement action.	X Perception of increased regulatory burden.	√√ Helps maintain character of sensitive rural areas.	Net positive contribution to policy aims and affected parties but with potentially significant adverse impacts on uses and local authorities. Merits further detailed consideration.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 11

Part 7: Forestry buildings and operations

- 11.1 While use of land for forestry does not constitute development, Part 7 permits a range of development reasonably necessary for forestry and afforestation. This includes (a) works for the erection, extension or alteration of a building other than a dwelling, (b) the formation, alteration or maintenance of a private way, (c) operations on the land or other land held to obtain the materials for private ways and (d) any other operations except for engineering or mining.
- 11.2 Conditions apply to development related to buildings and private ways, if on Article 1(6) land or otherwise if amounting to a significant extension or alteration. A prior approval procedure applies as for Part 6 to significant extensions (more than 10% by volume or increased height) to buildings and such extensions can only be carried out once. As for Part 6, development is not permitted if over 3 metres in height within 3 Km. of the perimeter of an aerodrome or if within 25 metres of the metalled part of a trunk or classified road. Otherwise no height limits apply. Article 3 of the GPDO indicates that the normal EIA restrictions do not apply to Part 7 development. However, forestry development is subject to separate EIA regulations relating only to forestry.
- 11.3 These rights are not restricted to specific organisations and are used by bodies such as the Forestry Commission, which is the largest single woodland owner and user of such rights, by the National Forest, Community Forests and private landowners with forestry activities. The treatment of forestry within the planning system may reflect historic factors concerned with securing timber supplies and the rationale for permitted development rights would appear to be to allow forestry bodies to carry out modest development on their land required for forestry operations that does not cause harm to the environment.
- 11.4 Typical types of development carried out under these rights include erection of storage buildings for forestry maintenance equipment, timber extraction vehicles and fencing equipment, and for vehicle maintenance workshops. Such buildings are not always located within forests. Other than buildings, operations include fencing work and laying out of forest tracks and hardstandings for vehicles and open storage, and constructing footpaths and cycle tracks through the forest. These rights are exercised several hundred times a year by the Forestry Commission alone.
- 11.5 The increasing use of forests for recreational purposes can give rise to demand for new types of development such as trim trails, visitor centres, visitor car parks, toilet blocks, cafes, ranger huts and adventure playgrounds. The Community Forests are likely to require more visitor car parks and forest tracks. While larger built development has often been obtained through planning applications, some authorities have allowed

certain recreational uses under permitted development rights. If forestry operations are now to be defined more widely to include forest recreation, all such development could be interpreted as falling within Part 7.

- 11.6 A 1995 Government research study considered Part 7 permitted development rights as part of a wider investigation of the operation and effectiveness of planning controls over agricultural and forestry developments.⁷ While concluding that the prior approval process was generally working well, it identified several problems including uncertainties among local authorities on how the prior approval procedure should operate in detail, meeting the 28 day deadline and inconsistency between authorities in operating it. Recommendations relevant to forestry included continuing to make prior approval apply to forestry developments; and increasing the determination fee. (Annexe 5)

ISSUES

- 11.7 Only a small proportion (7%) of the responding local authorities indicated that Part 7 gave rise to any problems, a significant proportion of these being National Park authorities. Only four authorities (2%) indicated any difficulties in interpreting Part 7.
- 11.8 Some 54% of planning authorities gave a view on whether Part 7 rights were too restrictive or otherwise. Of those, 53% saw Part 7 permitted development rights as about right, while 46% considered them too loosely defined, and only 1% indicated they were too restrictive. The main concerns stated, mainly by National Parks, were:
- creation of vehicle tracks for extraction of timber in remote areas; because of the size of the vehicles involved, these can be wide tracks and extensive hardstandings for vehicle turning/parking, with highly visible impacts on sensitive landscape areas,
 - the large size of buildings erected for forestry purposes e.g. to house large machines needed to maintain woodland, which are seen as more generous than allowed for agricultural buildings; changes in forestry operations mean that there are few large buildings now needed with increasing use of contractors based elsewhere;
 - erection by private landowners of *'forestry'* buildings which resemble dwelling houses in form and may be intended for such use in future; this was raised only by one local authority.
- 11.9 Although not raised as a problem by any respondent, and while recreation access to forests was supported, there appeared to be uncertainty as to whether provision of forest visitor facilities should be controlled through planning applications, as generally appears to happen in practice at present, or whether they should be interpreted as falling with Part 7 rights.
- 11.10 There were also some views that permitted development rights for forestry should be brought into line with those for agriculture, and that forestry development should be subject to full planning control within protected landscape areas, rather than rely on the prior approval procedure.

⁷ Planning Controls over Agricultural and Forestry Development and Rural Building Conversions, DoE, 1995.

- 11.11 No cases were identified of Article 4 Directions being used to remove permitted development rights for forestry purposes.
- 11.12 Users of Part 7 permitted development rights did not identify any particular difficulties with their operation, the limitations applying, and the prior approval procedures. Reduction of these rights or requiring full planning control was seen as likely to cause unnecessary delays to forestry operations. No major issues were identified by Government departments consulted. A number of airport operators and aviation organisations raised a concern on potential use of forestry permitted development rights within safeguarding areas of airports, specifically in relation to height of buildings, increasing bird strike risk and increasing the numbers of people in such areas.

SCOPE FOR CHANGE

- 11.13 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 7 and discussed below.
- 11.14 These rights generally support Government policy aims for forestry – the sustainable management of existing woods and forests and the steady expansion of the woodland area to provide more benefits for society and the environment. They can also support strategic priorities to promote the role of forestry for rural development, for economic regeneration, for recreation, access and tourism and to enhance the environment and cultural heritage. At the same time, there is some scope for conflict with policy aims to protect the countryside and sensitive landscape areas in particular.
- 11.15 The desirable outcome with respect to these rights would be for essential forestry development to be undertaken without delays or giving rise to significant impacts on the surrounding countryside. These rights are subject to a number of size limitations while consultation responses did not identify Part 7 as causing significant or widespread problems or indicate pressures for major changes and controls apply through the EIA regulations for forestry. However, there are some inconsistencies with other Parts of the GPDO. On balance, no major change appears necessary for this Part but there is a need to address inconsistencies and provide better clarification in some areas. These are considered below.
- 11.16 **Limitations on building size:** There is currently no restriction on the size of new forestry buildings, unlike agricultural buildings which are limited to 465 m² in floorspace. Suggestions have been made that forestry should be brought into line with industrial and agricultural development for consistency. This lack of size limitation appears inconsistent with Part 6, particularly in sensitive landscape areas such as AONBs or National Parks. However, it can be argued that forestry typically requires fewer buildings generally than agriculture, and very few large buildings, that these are less visible in forested areas and few problems arise. The absence of identified cases of harm does not provide a clear case for change but to give better protection to more sensitive landscape areas, further consideration should be given to a similar size restriction to that in Part 6 but to apply only in AONBs and National Parks.

- 11.17 **Other Restrictions in Sensitive Landscape Areas:** There have been suggestions that greater controls should apply generally to forestry buildings and tracks in National Parks, AONBs and other protected landscape areas. However, there is already a prior approval requirement for significant extensions of buildings in Article 1(6) land as well as for private ways (for siting and means of construction) formed under this Part. In line with other changes proposed in Chapter 39, the same restrictions should apply in both AONBs and National Parks but no other changes are proposed other than the size limits proposed above.
- 11.18 **Clarification of Recreational Uses in Forestry:** While the wording of Part 7 could be interpreted as allowing forestry visitor centres and other related built recreational facilities, these appear more likely to give rise to material impacts, for example in terms of traffic, and should be subject to normal planning control. No adverse impacts have been identified from such development in the past as the Forestry Commission tend to make planning applications for them. However, to avoid doubt, the interpretation text in Part 7, and in the proposed User Guidance document, should clarify that forestry visitor centres above a specified threshold, e.g. 1,000 m² in line with other Parts of the GPDO, are excluded from Part 7.
- 11.20 **Removal of Redundant Buildings:** unlike for Part 6 agriculture development, there is no requirement to remove redundant forestry buildings. Some users indicate they remove redundant buildings but some can be sold or leased to non-forestry organisations. It is difficult to see why buildings erected under Part 7 permitted development rights should remain where no longer required for that purpose, especially when this does not apply to agricultural buildings, although their re-use may have some benefits to rural diversification. The absence of widespread problems and some potential benefits does not clearly support a restriction to remove redundant buildings similar to Part 6, but this could be considered further.
- 11.21 The recommended changes, therefore, are to:
- **apply the same restrictions on sizes of building extension and prior approval requirements in both AONBs and National Parks; and**
 - **clarify that forestry visitor centres above a specified threshold, e. g. 1,000 m² in line with other Parts of the GPDO, are excluded from Part 7.**
- 11.21 Consideration should also be given to:
- requiring a similar restriction on size of forestry buildings to that in Part 6 but to apply only in AONBs and National Parks; and
 - a condition requiring removal of redundant forestry buildings.
- 11.22 None of the proposed changes appears likely to give rise to large numbers of planning applications and they should enable greater control in sensitive areas and so support policy aims.

Table 7: Assessment of recommendations for change to Part 7 of the GPDO

Proposed changes to Part 7: Forestry buildings and operations	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>✓✓ Support policy aims on forestry, rural diversification and tourism.</p> <p>X some potential for adverse impacts on open countryside and sensitive areas but controlled by EIA regulations and prior approval requirements.</p>	<p>✓ small reduction in numbers of planning applications for often minor works.</p>	<p>✓✓ greatly reduces no. of planning applications and associated delays for hundreds of essential works annually.</p>	<p>X some potential for adverse impacts of tracks on sensitive landscapes but controlled by EIA and prior approval and very few cases of harm reported.</p>	<p>Remove numerous essential works from delays of planning control and from LPA workloads, with adequate controls in place against adverse impacts.</p>
1. Exclude visitor centres from Part 7.	<p>X conflict with policy aims on forestry, rural diversification and tourism.</p> <p>✓ generally supports policy aims on protection of countryside and sensitive areas.</p>	<p>X delays as applications normally made for such facilities very small increase in no. of planning applications for a few LPAs.</p> <p>✓ provides greater clarity on need for application.</p>	<p>– no significant change to no. of planning applications and associated delays as applications normally made for such facilities.</p>	<p>– planning applications normally made for such facilities.</p> <p>Change recommended.</p>	<p>Greater clarity for users/LPAs outweighs very limited effects on other parties.</p>
2. Impose forestry building size limits to 465 m².	<p>X conflict with policy aims on forestry.</p> <p>✓ supports policy aims on protection of sensitive areas but prior approval applies in Article 1(6) land.</p> <p>✓ consistency with Part 6 limits.</p>	<p>X very small increase in numbers of planning applications for buildings above size limits.</p>	<p>X delays in some cases where larger buildings needed for forestry need planning application.</p>	<p>✓ may help control impacts on sensitive areas but most buildings in forest areas and no cases of harm reported.</p>	<p>Limited policy benefits offset by drawbacks for users and LPAs. Change not justified by evidence of harm and would be mainly to bring consistency with Part 6 agricultural building rights.</p> <p>Change not recommended but could be considered further.</p>

Table 7: *continued*

Proposed changes to Part 7: Forestry buildings and operations	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Require removal of redundant forestry buildings.	<p>√ supports policy aims on protection of countryside and sensitive areas.</p> <p>X possible conflict with policy aims on rural diversification and tourism.</p>	<p>√ reduces number of planning applications for change of use.</p>	<p>X may limit flexibility for other uses.</p>	<p>√ reduces no. of buildings in open countryside and sensitive areas.</p> <p>X may reduce opportunities for rural diversification.</p>	<p>Limited benefits offset by loss of opportunities for rural diversification/tourism.</p> <p>Main benefit would be consistency with Part 6 and other parts of GPDO where this restriction applies or is justified.</p> <p>No change but consider further.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 12

Part 8: Industrial and warehouse development

- 12.1 Various permitted development rights apply under Part 8 to sites in industrial and warehouse use. These were originally limited to industrial undertakers, with warehouse permitted development rights added in 1985 and in 1998 the rights were changed to apply to the type of use rather than the undertaker.
- 12.2 Class A of Part 8 permits the extension or alteration of an industrial building or a warehouse but not if the building is to be used for another purpose, or if the height exceeds the original, the new cubic content would exceed the original building by 25% (10% on Article 1(5) land), or if the original floorspace would be exceeded by 1,000 m² (500 m² on Article 1(5) land).
- 12.3 The external appearance of the premises must also not be '*materially affected*', no new development must be within 5 metres of the curtilage boundary and the development must not reduce parking or turning space. Conditions restricting Class A also restrict night time facilities for employees not working on the site, or if a notifiable quantity of a hazardous substance is present.
- 12.4 Class B permits the installation of plant and machinery, the provision of/changes to a sewer, cable or other apparatus, or a private way, railway or conveyor providing that they would not materially affect the external appearance of the premises, nor exceed a height of 15 metres or the height of anything replaced, whichever is greater.
- 12.5 Class C allows the provision of hard surfaces within the curtilage of an individual building or warehouse, for associated use. Class D permits the deposit of waste material from an industrial process on any land within a site so used on 1 July 1948, providing that the waste is not from the winning and working of minerals.
- 12.6 From the consultants' experience, Part 8 rights can be exercised several times pa on some large industrial sites for such works as new cycle sheds, roofing over stairwells and other minor developments, with other works such as new walls and gates carried out under Part 2, although it is not clear whether this is typical.

ISSUES

- 12.7 A relatively small proportion (15%) of responding local authorities indicated that Part 8 permitted development caused them some problems while 12% indicated some difficulties in interpreting this Part. Some 68% of planning authorities expressed a view on whether Part 8 rights were too restrictive or otherwise. Of those, the great majority (78%) considered them about right, 11% as too loose, and 11% as too restrictive. A few specific points were raised:

- the provision to allow hardstanding, which could be used for ancillary car parking, and the restriction against reducing parking or vehicle turning areas conflict with PPG13 aims to reduce parking and may no longer be appropriate;
- the difficulties in establishing the extent of the original buildings for large complex industrial sites where much development has taken place over time, and calculating how much volume or floorspace has been involved in extensions;
- difficulties in establishing the 1948 position for complex industrial sites with respect to areas used for waste deposits;
- the requirement that the external appearance of premises should not be '*materially altered*' needs better interpretation as potentially quite minor alterations could be excluded by this; respondents considered that this limitation effectively removed many of the rights granted by Class A;
- a general comment that Part 8 rights do not take account of potential impacts in mixed use areas; and
- Part 8 rights should relate more closely to the Use Classes since the term '*industrial*' is open to interpretation.

12.8 Very little response on this Part was made by potential users of these permitted development rights or organisations representing businesses, suggesting only limited use being made of these rights or there being no major concerns on how they operate. There were no suggestions that the size limits were inadequate or that small businesses suffered from the current limitations. One warehousing developer considered Part 8 rights to be about right and two others saw them as too strict, with simplification required and more flexibility for low impact development. The experience of the consultants is that a significant amount of minor development on industrial sites is excluded from permitted development by the restrictions on height and material effect on appearance, although it is sometimes possible to argue that such works are '*de minimis*'. No response was made by any interest groups other than a query as to why similar rights did not apply to B1 offices.

12.9 While not raised as an issue during consultation, it is noticeable that, unlike the English system, the Scottish GDPO has no volume limitation on industrial development and relies only on floorspace and height restrictions.

12.10 Another issue identified from case law was the lack of clarity, for Class A rights, on what forms the curtilage boundary of premises within industrial estates. An appeal case held that the industrial estate boundary was applicable rather than the estate service road boundary.⁸

12.11 No cases were found of Article 4 Directions or the EIA Regulations being used to restrict Part 8 rights.

8 EPL pp. 39129.

SCOPE FOR CHANGE

- 12.12 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 8 and discussed below.
- 12.13 These rights broadly support policy aims on economic competitiveness. While they have some potential to conflict with aims for protection of built heritage, design quality, the countryside and residential amenity, any impacts will be limited by the various size and distance limitations, and the additional restrictions on Article 1(5) land. On balance, these rights generally support Government policy.
- 12.14 The desirable outcome with regard to Part 8 rights would be for industrial/warehouse firms to be able to carry out minor developments to assist their economic competitiveness, and without delays or material impacts on amenity. Based on the consultation responses, the current rights do not appear to be causing significant problems. While it can be argued that increasing size limits for industrial building extensions would offer more support for policy aims, the current size limits are consistent with those for extensions in other parts of the GPDO and there were no calls for increases in these limits. Increases in size could begin to cause adverse impacts on adjoining uses and in terms of increased traffic generation. On the evidence available, there is no case to substantially alter these rights but a need for some improvements in drafting and interpretation.
- 12.15 Although not sought by any respondent, for consistency with a redrafted Part 1 and to reduce complexity on large sites, consideration was given to removing the volume control on extensions under Class A and relying instead on a percentage increase in floorspace (the lesser of 25% of the original building or 1,000 m²) combined with no increase in existing building height. This is the approach operating in the Scottish GPDO and no change was proposed for this element in the recent review. However, the Scottish system allows the greater of a 25% increase or 1,000 m², which could allow disproportionately large extensions to small buildings. This change has been considered on the basis that volumes of buildings on large sites can be difficult to measure and record with changes over time but unlike for householder development, this concern does not appear to have caused widespread problems. Despite this, modest benefits in reducing complexity for industrial firms do not appear to be countered by significant drawbacks, and this change is recommended.
- 12.16 The term '*material effect on external appearance*' should at least be clarified through interpretation within Part 8 to indicate that this test should apply to the industrial site or affected street frontage as a whole, rather than to an individual building. This will provide greater clarity for users and local planning authorities to help interpret these rights in line with the spirit of the GPDO. Indeed, consideration should also be given to removing this limitation outside conservation areas and where a building does not front a highway, on the basis that a large measure of control is provided by the size and distance limitations in Part 8.

- 12.17 To avoid uncertainty, the interpretation in this Part should confirm that Part 8 applies to Use Classes B1(c), B2 and B8. Consideration has been given to whether B1 offices should also have similar rights. However, with greater scope to locate in residential areas, B1 offices can be different in scale, character and location to industrial development, with greater potential for impacts on residential amenity and traffic generation and conflict with policy aim for town centres, and such an extension to this use class is not considered appropriate.
- 12.18 Since many industrial premises lie within industrial estates, clarification could usefully be provided on how the curtilage boundary should be defined in such cases, with reference to the appeal decision identified above.
- 12.19 The restriction on development that involves a reduction in parking area can be regarded as inconsistent with transport policy aims. However, removal of this restriction could potentially result in more off-site parking of larger vehicles, with adverse impacts on amenity. On balance, no change is proposed in this respect.
- 12.20 The recommended changes are therefore:
- **clarify that material effect on external appearance applies to the site as a whole and consider removing this limitation outside conservation areas and on premises not fronting a highway;**
 - **clarify how the curtilage boundary should be defined on industrial estates; and**
 - **limit extensions under Class A by floorspace rather than by floorspace and volume.**
- 12.21 None of the limited changes proposed above are likely to significantly affect workloads of local planning authorities and offer some benefits of greater clarity for users.

Table 8: Assessment of recommendations for change to Part 8 of the GPDO

Proposed Changes to Part 8: Industrial and Warehouse Development	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Rights for extensions and plant support aims for economic competitiveness.</p> <p>X Potential for extensions to adversely impact adjoining uses and sensitive areas but controlled by reduced limits in Article 1(5) land and setback from site boundary.</p> <p>X Restriction on removing car parking areas conflicts with sustainability aims to reduce car parking.</p>	<p>√ reduce numbers of planning applications for uncontentious works within large sites.</p>	<p>√√ avoids delays/costs for expansion and new plant.</p> <p>√ Reduces regulatory burden on business.</p>	<p>X some potential for extensions to adversely impact adjoining uses and character of conservation areas but no cases of harm identified.</p>	<p>Benefits for users and policy aims outweigh potential adverse impacts since no cases of harm found and various limitations apply.</p>
1. Increase size limits for extensions.	<p>√ stronger support for economic competitiveness aims.</p> <p>X Potential conflict with heritage and countryside aims.</p>	<p>√ small reduction in numbers of planning applications.</p>	<p>√ avoids delays/costs for expansion and new plant but change not proposed by any user.</p>	<p>XX greater potential for extensions to adversely impact adjoining uses and sensitive areas.</p>	<p>Benefits for users and policy aims outweigh by greater potential for adverse impacts and lack of clear support from users. No change recommended.</p>

Table 8: *continued*

Proposed Changes to Part 8: Industrial and Warehouse Development	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
2. Remove volume control on extensions	√ Reduces regulatory burden on business.	√ would simplify assessment of whether permitted development applies in a modest no. of cases.	√ would simplify assessment of whether permitted development applies but not proposed by users.	– no impact provided other adequate controls in place e.g. floorspace, distance from boundary.	Small benefits for LPAs and users with no major adverse effects. Scale of benefits does not make clear case for change but absence of harm means change should be considered further.
3. Remove restriction on loss of parking area	√ supports aims to reduce car parking.	– no change to numbers of planning applications.	√ greater flexibility in use of sites.	XX greater potential for offsite car parking to affect adjoining areas.	Limited benefits to users and policy outweighed by potential harm to adjoining areas. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high)

X indicates negative impact from X (low) to XXX (high)

– indicates neutral impact

pd = permitted development

CHAPTER 13

Part 9: Repairs to unadopted streets and private ways

- 13.1 Part 9 permits the carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way.
- 13.2 Section 55 of the 1990 Act states that works by local highway authorities for the maintenance or improvement of roads do not constitute development. Part 9 of the GPDO therefore effectively extends this exemption from normal planning control to include works to '*unadopted streets*' and '*private ways*', regardless of who carries out these works. Typical works carried out include regular resurfacing of roads and raising the level of a track.
- 13.3 No restrictions in designated areas or other limitations apply to this Part.

ISSUES

- 13.4 Only 5% of responding local authorities indicated that Part 9 permitted development caused them some problems while the same proportion indicated some difficulties in interpreting this Part. Just under 40% of planning authorities expressed a view on whether Part 9 rights were too restrictive or otherwise. Of those, the great majority (87%) considered them about right, 10% as too loose, and only 3% as too restrictive. Few specific concerns were raised:
- inadequate definition of the terms '*private way*', '*highway*', '*maintenance*' and '*improvement*';
 - landowners using Part 9 instead of Part 6 to carry out improvement works as 'repairs' to private agricultural ways, without having to notify the local planning authority, as they would have to under Part 6. This results in local authorities having no control over the appearance and design of private ways in sensitive locations, such as National Parks;
 - '*tracks*' becoming tarmac drives, changing the character of an area from rural to suburban; and
 - tipping of waste or imported rubble on '*tracks*' to '*improve*' the surface, leading to an adverse visual impact on the character of an area and potential for impact on drainage and water quality.

- 13.5 No cases were found of Article 4 Directions or the EIA Regulations being used to restrict Part 9 rights.
- 13.6 Although the majority of local planning authorities considered Part 9 to cause no or few problems, it should be noted that those authorities more concerned with protecting landscapes, i.e. National Parks and authorities with AONB areas, considered that such '*improvements*' to private ways and unadopted streets can lead to adverse visual impacts, as well as potential environmental impact on water quality and drainage.

SCOPE FOR CHANGE

- 13.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 9 and discussed below.
- 13.8 These rights have some potential for conflict with policy aims to protect countryside, sensitive landscape areas, conservation areas, drainage and water quality. However, for the most part they involve fairly minor works within narrowly defined boundaries and the scope for impact is not great provided suitable controls apply. Other legislation, including the Environmental Protection Act should control the use of potentially hazardous waste although some waste used for Part 9 works is not hazardous.
- 13.9 Part 9 rights relate to numerous, routine and essential maintenance works and, based on consultation responses, the majority do not appear to give rise to material planning issues. They appear to perform a useful function and it would therefore seem appropriate that they should remain as permitted development but that some amendments should be considered to address specific concerns.
- 13.10 Creating a hard surface to an unsurfaced private way has potential to have material impacts in sensitive locations. To help address this problem and, for consistency, within more environmentally sensitive areas such as Article 1(5) land, works under Part 9 should be subject to the same prior approval process required for agricultural tracks by Part 6.
- 13.11 Better definitions of certain terms are needed. A definition of '*private way*' is provided in Article 1(2) of the GPDO, as meaning '*a highway not maintainable at the public expense and any other way, other than a highway*'. There is, however, no adequate definition in the GPDO or the Highways Act of what constitutes a highway nor a definition of what constitutes maintenance and/or improvement. Provision of appropriate definitions of these terms should be included within the GPDO generally as well as Part 9.

Case Study 14:

In Albourne, West Sussex, waste materials were imported on to a track to a former nursery to form a road to a B1 building. Enforcement action was taken due to impact on residential amenity. On appeal, the development was found not to benefit from Part 6 rights as no agricultural use still applied and because the works were beyond the boundaries of the former dirt track, could not benefit from Part 9 rights either. However, the appeal was only partly dismissed, the whole process took some 2 years and some of the waste material was allowed to remain, which was still a problem in the opinion of the local authority.

- 13.12 In this context, an appeal decision by the Secretary of State held that permitted development rights under Part 9 may extend to any road, lane, footway, alley or passage, whether a public thoroughfare or not; there must also be a recognisable street or way already in existence, and the proposed works must be within its boundaries.⁹ This could help provide an appropriate definition or interpretation to clarify the application of these rights.
- 13.13 In relation to *'improvement'*, case law has held that the ordinary meaning of *'improvements'* is *'limited to changes which do not alter the basic character of the thing which is improved'* and that works permitted by Part 9 could only affect the surface and foundations of a way but not widen it or alter its route.¹⁰ The creation of a hard surface to an existing track was also held to be capable of being an improvement which would not alter the character of the way. However, as indicated above, such *'improvements'* can give rise to undesirable impacts such as tipping of waste on *'tracks'*. There is therefore a case for specifically excluding, in the interpretation of Part 9, any widening or significant raising in level of a way as part of improvements. Some guidance on what *'significant'* means in this context is necessary, perhaps that which has a material harmful effect on the character of the surrounding area.
- 13.14 In relation to the potential environmental impact of the use of hazardous waste, this does not appear to be a widespread problem and it would be practically difficult to exclude hazardous waste from Part 9 as a local planning authority would not be able to properly define what is hazardous waste. A more general ban on the use of waste in Part 9 works would prevent legitimate materials, such as builder's rubble from being used. On balance, it is considered that existing environmental legislation should be able to prevent the use of hazardous waste and it would not be appropriate for the GPDO to deal with this issue. However, the proposal to make Part 9 works subject to prior approval in Article 1(5) land should allow local authorities to consider the materials to be used in these sensitive environmental areas.
- 13.15 The proposed limited changes would increase the number of prior approval applications within a limited number of sensitive areas, but the numbers are not anticipated to be great.
- 13.16 In summary, therefore, the recommended changes are:
- **require prior approval of Part 9 works in Article 1(5) land; and**
 - **specifically exclude widening or significant raising of tracks from the scope of *'repairs and improvements'* in Part 9.**

⁹ JPL 70, 1996.

¹⁰ Court of Appeal in *Cowen v. Peak District National Park* [1999], PLR 108.

Table 9: Assessment of recommendations for changes to Part 9 of the GPDO					
Proposed changes to Part 9	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights: <i>Improvements to private ways and unadopted streets.</i>	X potential for adverse visual and traffic impact on sensitive landscapes. X potential for adverse impact on drainage and water courses from use of waste to 'improve tracks'.	√ reduction in numbers of planning /prior approval applications, most of which would be uncontentious and raise no planning issues.	√ reduction in regulatory burden on private landowners.	X potential for adverse visual impact on sensitive environmental areas from use of inappropriate materials and widening of tracks to carry more traffic/larger vehicles. X potential for water pollution using waste.	Only case for maintaining Part 9 is to reduce regulatory burden on planning authorities and landowners, but there exists potential for adverse impact on sensitive landscape areas and water quality. May not appear to be a widespread problem as would not always come to attention of planning authorities, but appears to be a significant problem where authorities take a close interest in landscape issues, i.e. National Parks.
1. Require prior approval in Article 1(5) land.	√ provide greater protection for sensitive landscapes.	√ provide opportunity to better protect sensitive landscapes. X increase in number of prior approval applications and workload.	X perception of increased regulatory burden, but would make private landowners subject to same requirements as agricultural tracks (See Part 6). √ clarification for landowners and farmers that private roads are also subject to the prior approval process in sensitive areas.	√/ better protection of countryside and landscape in terms of visual amenity. – not extended to other areas.	Significantly improved protection of sensitive landscapes. Change recommended.

Table 9: continued

Proposed changes to Part 9	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
2. Specifically exclude widening or significant raising of tracks from the scope of 'repairs and improvements'.	√ provide greater protection for all landscapes from inappropriate development.	√ provide opportunity to better protect landscapes. √ clarification for planning authorities.	X perception of increased regulatory burden. √ clarification for landowners/ farmers.	√/ better protection of countryside and landscape.	Clarification of Part 9 to prevent visually inappropriate works. Change recommended.
3. Specifically exclude the use of waste for repairs.	√ provide greater environmental protection for drainage and water courses.	√ provide greater environmental protection. √ clarification for planning authorities. X small increase in number of planning applications.	X perception of increased regulatory burden. √ clarification for landowners/ farmers that using waste is not PD. XX could exclude use of legitimate materials such as builder's rubble.	√/ better environmental protection. X perception of increased regulatory burden.	Benefits to environment offset by practical difficulties in distinguishing appropriate types of waste and other legislation controls use of hazardous waste. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 14

Part 10: Repairs to services (other than by local authorities and statutory undertakers)

- 14.1 Part 10 permits works for the purposes of inspecting, repairing or renewing any sewer, main, pipe, cable or other apparatus, including breaking open any land for that purpose. As indicated by Section 55(2)(c) of the 1990 Act, these types of work do not constitute development when carried out by local authorities and statutory undertakers. Part 10 therefore extends this freedom from planning control to other users, including private landowners, who may have an urgent need to repair services.
- 14.2 No conditions apply and no special restrictions exist in designated areas.

ISSUES

- 14.3 A very small proportion (2%) of responding local planning authorities indicated that they had any difficulties in understanding or using Part 10 of the GPDO, but most of these also found all parts of the GPDO difficult and had no specific problems with Part 10. Only 1% reported any problems arising from Part 10 rights. Some 34% of responding local authorities expressed a view on whether Part 10 rights were properly defined. Of those, 94% considered these rights were about right while only 6% considered them to be too loosely defined.
- 14.4 The few specific concerns on this Part identified by either local authorities or other organisations were:
- One authority was concerned that the lack of any requirement to reinstate or re-use the original surface means that important townscape schemes are constantly damaged (although this is more likely due to the works carried out by statutory undertakers, which is not development in terms of the 1990 Act).
 - One local planning authority disputed whether a drain could be included within the definition of a sewer. The same authority stated that Part 10 took no account of potential impacts on trees or SSSIs and that works carried out under it had damaged important ecological sites and trees.
 - The last concern was also shared by an environmental organisation while some archaeological and historical groups also considered that works under Part 10 could lead to damage to areas of archaeological interest.
- 14.5 No cases were found of Article 4 Directions being used to restrict Part 10 rights.

SCOPE FOR CHANGE

- 14.6 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 10 and discussed below.
- 14.7 Most concerns about repair works relate to those by local authorities or statutory undertakers rather than Part 10 works, which have limited scope for conflict with policy aims to protect the character of the built environment.
- 14.8 Part 10 works are often carried out at short notice in response to damaged infrastructure by private landowners and no widespread problems appear to arise from these rights. Given that such works may need to be undertaken in emergencies, are generally uncontentious and few material planning issues are associated with them, it would seem inappropriate to bring them within planning control. There are, however, a number of issues where clarification could be improved and where additional controls could be considered to reduce reported impacts.
- 14.9 In terms of impacts on streetscape, it is questionable how much impact Part 10 has, as the majority of streetscape issues arise from works carried out by statutory undertakers that is not development. This issue is considered in more detail at paragraph 39.52, in Case Study 5 and in Chapter 21, which discusses statutory undertakers' permitted development rights. There is however potential for impact from works by private landowners and it is noted that the equivalent Part of the Scottish GPDO includes a condition that the land affected must be reinstated to either its previous condition or to the satisfaction of the local planning authority within a certain time period. Although the extent to which this condition is enforced is not clear, there appear benefits in making clear to users, through such a condition, that the land must be reinstated, once the works have been completed, to its original condition or as otherwise agreed in writing with the local authority.
- 14.10 Several planning authorities and a number of interest groups have raised the issue of the impact of poor quality of reinstatement works on the streetscape, resulting in difficult conditions for pedestrians, visually unappealing street surfaces and damage to trees and that the current system does not appear to be protecting the quality of the streetscape. However, as stated above, most of these effects relate to repairs to services by local authorities and statutory undertakers are specifically excluded from the definition of development and therefore do not come within planning control. Where such works are carried out within the public highway, the New Roads and Street Works Act 1991 requires the local highway authority to be notified and this body has powers to inspect the quality of all reinstatement works and require remedial repairs or levy fines for poor quality work.
- 14.11 The Department for Transport produces a Code of Practice on Reinstatement Works and is carrying out a number of pilot schemes across the UK to seek improvements to working practices and to ensure a higher quality of reinstatement work. If these measures do not improve the situation, a radical measure would be to classify repairs to services by local authorities and statutory undertakers as development. These would then be permitted by Part 10 of the GPDO, but with repairs to services made subject to conditions requiring both notification to the local highway authority and the reinstatement works being carried out to the satisfaction of the local planning authority. This more radical approach to address streetscape issues

would involve changes to primary legislation, but this may not be justified by Part 10 works. This issue is covered in more detail at paragraph 39.52, in Case Study 5 and in Chapter 21.

- 14.12 In order to protect SSSIs and archaeological areas from potentially damaging works carried out under Part 10, it may be appropriate to include a condition that any works (unless in an emergency) carried out within such designated areas must be subject to prior approval from the local planning authority, who would have to consult with relevant statutory consultees on the potential effects. EIA regulations are unlikely to be effective in controlling what are often small scale works while Part 23 (Mineral Exploration) already removes permitted development rights in SSSIs.
- 13.13 To avoid further interpretation disputes, it appears appropriate to specifically include 'drain' within the description of permitted works in Part 10. This would be consistent with the view of the Courts that the purpose of Part 10 was to allow landowners to carry out repair work on their land without having to obtain planning permission and that the definition of a sewer should extend to include drains and drainage channels.¹¹
- 14.14 The recommended changes to this Part are, therefore:
- **introduce a condition that the land be reinstated to its previous condition or as otherwise agreed with the local planning authority;**
 - **require prior approval for non-emergency repair works in archaeological areas; and**
 - **clarify that '*drain*' falls within the definition of a sewer.**
- 14.15 Subject to the success of other measures to control impacts of poor reinstatement, consider classifying repairs to services by local highway authorities and statutory undertakers as development. These would then be permitted by an amended Part 10 of the GPDO but made subject to conditions requiring notification to the local highway authority and the reinstatement works being carried out to the satisfaction of the local planning authority.

¹¹ EPL pp. 39133.

Table 10: Assessment of recommendations for changes to Part 10 of the GPDO					
Proposed changes to Part 10	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights: Repairs to Services (other than by local authorities and statutory undertakers).	– limited potential for adverse archaeological and/or visual impact.	√√ reduction in large numbers of planning applications, the vast majority of which would be uncontentious and raise no planning issues.	– reduction in regulatory burden on private landowners.	X Limited potential for adverse visual impact and archaeological impact by private landowners (but significant impact by statutory undertakers, which is not subject to planning control).	Part 10 allows minor uncontentious development to be carried out by private landowners, but there is potential for adverse archaeological and/or visual impact from repairs to underground services.
1. Require prior approval in archaeological areas.	√ greater protection for archaeological areas.	√ allow greater opportunity for planning authorities to protect archaeology by 'sifting' through prior approval notices. X increase in number of enquiries as to whether land is an archaeological area. X small increase in number of prior approval applications	X increased regulatory burden on private landowners as would need to check whether within an archaeological area.	√ greater protection for archaeological areas.	Need to define an 'archaeological area', but this would offer greater protection to sensitive archaeological remains. Change recommended subject to agreed definition of an archaeological area.

Table 10: *continued*

Proposed changes to Part 10	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
2. Introduce a condition that the land be reinstated to its previous condition.	√ greater protection for landscape /townscape.	– no increase in number of applications or prior approvals. X but to be effective would require enforcement and could be difficult to establish previous condition of land.	– would clarify to landowners that land should be restored to previous condition, no increase regulatory burden.	√ greater protection for landscape/townscape.	No impact on users, minor impact on planning authorities through increased enforcement, but should improve quality of reinstatement works. Change recommended.
3. Make repairs to all services, including by statutory undertaker, development by changing primary legislation, but then make it permitted development subject to conditions on reinstatement and compliance with a Street Management Code.	√√√ greater protection for landscape/townscape.	X to be effective, would require closer co-operation between statutory undertakers/highway and planning authorities and better enforcement -resources issue.	X perceived increase in regulatory burden, but best practice statutory undertakers should not be impacted.		Significant benefits for the environment through better reinstatement, but would require change in primary legislation. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 15

Part 11: Development under local and private acts or orders

- 15.1 This Part permits development authorised by a local or private Act of Parliament, or by certain Parliamentary Orders, which designate specifically both the nature of the development and the land on which it may be carried out. Conditions specifically exclude erection, extension or alteration of buildings, bridges, aqueducts, piers or dams or means of access to highways without prior approval of the appropriate authority.
- 15.2 In effect, Part 11 provides only an outline permission, as prior approval is required for detailed plans and specifications for any building or infrastructure. Prior approval can only be refused on the grounds of injury to amenity or better siting being possible.
- 15.3 In addition, Article 3(7) indicates that no development authorised by an Act or Order subject to the grant of any consent or approval is to be treated as authorised under Part 11 unless or until that consent or approval is obtained, except where post 1948 legislation provides express provision to the contrary i.e. specifically enabling deemed permission under the GPDO to constitute such approval. Article 4 Directions do not apply to Part 11 development authorised by an Act after 1948.
- 15.4 A range of developments are covered by these rights including toll roads established under Acts of Parliament (e.g. The Dartford Crossing Act 1988) and rail transport development under various Railways Acts. Some of this legislation precedes the 1947 Town and Country Planning Act e.g. the 1845 Railways Clauses Consolidation Act, but is still widely used by railway undertakers.
- 15.5 In contrast to Part 17 Class A (railway or light rail undertakings), EIA requirements are excluded from Part 11 by Article 3 (12). Furthermore, Part 11 rights based on post 1948 acts cannot be withdrawn by an Article 4 Direction.

ISSUES

- 15.6 A small proportion (5%) of responding local authorities indicated that Part 11 gave rise to any adverse impacts or indicated any difficulties in interpretation of it. Some 29% of planning authorities provided a view on whether Part 11 rights were too restrictive or otherwise. Of those, 97% of planning authorities considered Part 11 permitted development rights as about right, while only 3% saw them as too loosely defined. There were few specific concerns identified, the main one being that railway legislation over 100 years old could be used to carry out works not otherwise allowed under Part 17 rights.

- 15.7 Only 7% of users and other bodies indicated any problems arising from Part 11 rights, while only 2% considered these rights were too loosely defined. Railway undertakers appeared to be the most frequent users of these rights for works not covered by Part 17 Class A, using them frequently for rebuilding and alterations of stations covered by specific Acts.
- 15.8 Network Rail considers Part 11 only applies to itself (for railway works) as the inheritor of the original railway legislation but that it should also apply to railway operating companies. This undertaker currently exercises rights under Part 11 (as well as Part 17) up to one thousand times annually, expects to use them more frequently for major line upgrades and considers them essential. However, other railway related organisations generally considered this section too vague and difficult for local authorities to interpret, considering that improved guidance is needed on it. They indicated cases of resistance by local authorities to accepting that 19th century legislation can enable works and often delaying urgent works by requiring a Lawful Development Certificate to confirm this.

SCOPE FOR CHANGE

- 15.9 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 11 and discussed below.
- 15.10 This Part appears to give rise to relatively few material planning issues. Its main function appears to be to enable development to proceed which has been considered appropriate through other legislation but only subject to consideration of detailed matters. In this way it can be seen as indirectly supporting a range of policy aims but at the same time may give rise to conflicts with, for example, protection of the built and rural environment.
- 15.11 The main issue is the apparent loophole in giving a choice of permitted development rights for certain undertakers, particularly through very dated legislation brought in at a time when environmental conditions were very different. The perception among many local planning authorities with experience of Part 11 development is that the users are using historic or obscure legislation to circumvent restrictions under other permitted development rights. The lack of any requirement for EIA for Part 11 works, particularly where no EIA was carried out in respect of the enabling act or Order, also appears anomalous although no specific problems arising from this were identified.
- 15.12 Section 61(2) of the 1990 Act enables the GPDO to direct that any pre-1947 Act enactment should not apply to development specified in the order. The concern expressed on the utilisation of Victorian railway powers so as to avoid the requirement for express planning permission could be addressed by excluding pre-1947 Act enactments from Part 11.
- 15.13 However, discussions with both railway infrastructure providers and regulators indicated that Part 11 rights are essential to carry out important railway works not covered by Part 17. These works include replacement of bridges, upgrading of track, signalling facilities and alterations to buildings and other infrastructure, all of which are seen as vital to the maintenance, upgrading and safety of the railway network. These bodies argued that any loss of Part 11 rights would bring the

national rail network to a halt, because of the delays associated with thousands of planning applications for track upgrade works, which need to be undertaken in short, carefully planned time slots. Although the railway legislation relied on is Victorian in origin, it continues to serve an important purpose and has not needed to be replaced by newer legislation. Concerns related to its use appear to be ones of perception than actual harm.

- 15.14 The lack of EIA controls over Part 11 arises because the 1985 EC Directive on Environmental assessment specifically did not apply to acts under national legislation, and Parliament did not seek to restrict the GPDO for older acts which had not been subject to environmental assessment. However, Part 11 allows only replacement/alteration of existing infrastructure rather than new development, which is primarily carried out within long established railway corridors. While, by the nature of railways, large site areas may be involved and noisy works carried out, no cases have been identified where Part 11 works would have been such as to require EIA. Rail organisations argue that if Part 11 works were subject to EIA controls, given the cautious approach now being adopted towards EIA by many local authorities, many EIAs would be sought (or argued over) because of the large site areas affected and this would again result in unacceptable delays to upgrading and maintaining the rail network.

Case Study 4:

Using Part 11 rights, derived from the Birmingham and Gloucester Railway Act 1836, a railway undertaker sought prior approval to replace, for safety reasons, a Victorian, stone built railway bridge in the Green Belt adjoining residential areas, with a concrete structure. The local planning authority refused this on design grounds, delaying urgent works, but a compromise scheme with masonry facings was eventually negotiated.

- 15.15 Investigation of case studies where Part 11 rights have been used failed to find any examples of adverse impacts arising which could not be controlled by local planning authorities. Indeed, these cases suggested that current controls work reasonably well. Overall, while understandable concerns apply to this Part 11, no case has been made for significant restriction of these rights.
- 15.16 No time limit is specified for prior approval determinations under this Part but this would be addressed under the revised procedure proposed in Chapter 39.
- 15.17 Arguments have been made for allowing bodies other than only the inheritors of the original enabling legislation to benefit from these rights. This is not prevented under the current wording of Part 11, so long as its other requirements are met. It appears reasonable that lessees or contractors acting for the inheriting body should continue to be able to use Part 11 for relevant works and text could perhaps be added in this Part to avoid doubt.
- 15.18 It is understood that, since the commencement of this study, a private members bill has been introduced in parliament proposing changes to railway undertakers' rights under Part 17 Class A in order to restrict telecommunications masts above a height of 15 m along railway lines. This is also a recommendation of this study for Part 17 Class A. Because of the scope to use Part 11 rights for certain railway development, for consistency, a similar restriction should apply to Part 11.

15.19 The only specific change proposed to this Part therefore is to impose a height limit of 15 m for masts. However, to address the above perceptions relating to Part 11 and reduce the need for local authorities to seek legal advice on prior approvals under it, an explanation of its purpose, scope and the rationale behind these rights, along with relevant case law decisions, should be included in the User Guidance document.

Table 11: Assessment of recommendations for change to Part 11 of the GPDO

Proposed changes to Part 11: Development under private acts or orders	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√√ Broadly support policy aims on public transport and ports in particular by enabling upgrading and maintenance of infrastructure.	√√√ substantial reduction in numbers of planning applications for repeated often minor but essential works, possibly in the order of 100 pa per LPA.	√√√ substantially reduce no. of planning applications and associated delays for thousands of essential works annually.	X some potential for adverse impacts on adjoining areas and residential amenity but controlled by prior approval and very few cases of harm reported.	Remove numerous essential works from delays of planning control and from LPA workloads. The few concerns raised were perceptions of unfairness rather than actual harm.
1. Restrict Part 11 rights to apply only to post 1948 enabling legislation.	X would conflict with policy aims on public transport and ports. √ improve perception of fairness in planning system.	XXX major increase in no. of planning applications for many LPAs for railway upgrading/repair possibly in the order of 100 ppa per LPA. √ improve perception of fairness in planning system.	XXX major increase in no. of planning applications (several thousand annually) for railway upgrading/repair and associated delays to network improvements.	XX delays to improvements in rail transport network.	Major drawbacks to all affected parties greatly outweigh very minor benefits in improved perception of planning system. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 16

Part 12: Development by local authorities

- 16.1 This Part enables a wide range of relatively small public services works and infrastructure to be carried out by local authorities.
- 16.2 Class A permits the erection, construction, maintenance, improvement or other alteration by a local authority of any small ancillary building, works or equipment required by its functions on land it owns or maintains when not acting as a statutory undertaker. In addition, a range of specified structures is allowed on any land where required for the operation of a public service administered by the authority. Size limits of 200 m³ by volume and 4 metres in height apply to small ancillary buildings. No specific restrictions apply in designated areas.
- 16.3 Class B permits deposit of waste material (other than mineral waste) by a local authority, if on land so used on 1 July 1948, to any extended area or height. EIA regulations do not apply to this class.
- 16.4 These rights would appear to have been given to enable numerous and wide ranging public works to be carried out without undue delay, particularly since most will be uncontentious and carried out by a publicly accountable body. The types of development typically carried out under this Part include street furniture, small school related buildings, public shelters, refuse bins, lamp standards and information kiosks.
- 16.5 As well as Part 12, local authorities typically also make use of Part 2 (for fences) and Part 32 (for school extensions).

ISSUES

- 16.6 Some 23% of the responding local authorities indicated that Part 12 gives rise to some impacts while 31% indicated some difficulties in interpreting this Part. Some 66% of responding local authorities expressed a view on whether Part 12 rights were properly defined. Of those local authorities giving a view, 76% considered these rights to be about right, 13% as too loosely defined, and 11% as too restrictive.
- 16.7 Among other organisations and interest groups, some 12% of those responding indicated that Part 12 rights caused them some problems. Only 8% considered these rights to be too loosely defined, and none as too restrictive. The main issue raised was the effect of such works on streetscape and street clutter. Very few negative effects were raised by local authorities, the main one being potential impacts on trees from such works.

- 16.8 Not surprisingly, no cases were identified of Article 4 Directions being used to remove permitted development rights for Part 12 activities or for an EIA being required for such works.
- 16.9 Council departments using Part 12 rights generally considered these rights as important to their operations and a County Council would typically exercise them 50-100 times annually for items such as extensions and ancillary buildings for schools, libraries, halls and fire stations as well as erecting play equipment, signs and fencing.
- 16.10 While Part 12 rights were generally seen as working well by the user bodies, a number of specific concerns or adverse effects from these rights were identified, primarily by local planning authorities:
- The list of organisations given these rights needs to be updated to exclude Urban Development Corporations which no longer exist and to specifically include County Councils which, as education authorities, use permitted development rights for minor school development. In addition, with increased out-sourcing of Council functions, the GPDO should make it clear that the rights apply to those carrying out the works out on behalf of the local authority. It is also not clear if rights apply to the police and fire services under this Part.
 - While a 200 m³ limit applies to small ancillary buildings, it is not clear what size limits apply to works and structures; for example, what size of extension to a school car park would be allowed under '*small ancillary works*' and would a playground climbing wall be limited only by the 4 metre height restriction ?
 - The 200 m³ limit for small ancillary buildings is too small for a school classroom but the 250 m³ limit allowed under Part 32 is about right.
 - The restriction that extension works should not '*materially affect the external appearance of a building*' appears unduly restrictive when a building of up to 200 m³ is allowed without this restriction.
 - There is an issue of consistency with Part 32, which allows extensions to schools with a 250 m³ limit but with different restrictions; this gives local authorities a choice of which Part to use. While some authorities made use of the more flexible part, the view of others was that temporary classrooms should not be permitted development given their size, visual intrusion and scope to affect adjoining residential properties.
 - There are several areas where clarification is needed e.g. small ancillary buildings and whether these would include school classrooms which may be seen as a primary rather than ancillary use on a school site; whether the term '*lamp standards*' includes floodlighting around sports pitches; whether Council signs and notices are included; and whether '*waste*' includes refuse; a better definition of what is included by the term '*local authority functions*'.
 - There are different interpretations by planning authorities of what is included under '*works and equipment*' particularly whether this covers kick-about areas, outdoor basketball facilities, shelters for teenagers and children's play equipment,

and extensions to school car parks; if fences are included under Part 12, this would allow them to be up to 4m high, compared with the 2m allowed under Part 2.

- While Part 12 permits the erection or construction of small buildings, it is unclear whether this includes placement of pre-fabricated buildings on the site (e.g. a container for storage of playing field equipment).
- Class B allowing waste deposits is seen as too loosely defined with no limits on height of historic waste deposits dating back to 1948. Several County council waste authorities considered this should be deleted or height limits on waste deposits imposed.
- Suggestions were made that permitted development rights for parish councils should be restricted.

SCOPE FOR CHANGE

- 16.11 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 12 and discussed below.
- 16.12 These rights broadly support Government aims to improve public services, including education, but have some potential for conflict with protection of the built environment and heritage, and improved quality of design and streetscape. These rights can be justified by their enabling of a large number of facilities providing for essential public services, some urgently required. However, while relatively few material planning issues arising from Part 12 were identified by the consultation process, other research has identified adverse impacts on streetscape from inappropriate or badly sited street furniture. On balance, while there is a strong case for retaining Part 12 rights, alterations should be considered in several areas in order to support policy aims better.
- 16.13 Additional controls on Part 12 rights within sensitive areas could be considered. Requiring prior approval, for example, for all Council works within conservation areas may require a large number of repetitive applications although local authorities could relax this requirement selectively through a Local Development Order. Article 4 Directions could provide a more targeted approach but have resource implications. For consistency with other permitted development rights affecting streetscape, it is proposed that Part 12 rights for street furniture are made conditional on avoiding impacts on streetscape (through compliance with a national Street Management Code). Within AONBs and National Parks, the size limitations on Part 12 works are sufficient to avoid the need to require prior approval. In addition, guidance should be provided in a User Guidance document to encourage consultation by local authority user departments and compliance with this code.
- 16.14 The overlap and inconsistency between Part 12 and Part 32 for school development cause confusion and should be resolved in line with the aim of limiting a choice between Parts. This could be dealt with by introducing a new Part of the GPDO covering school development only and removing the rights for school development from existing Parts 12 and 32. If this were done, the 250 m³ limit on buildings from

Part 32 appears more appropriate but combined with a restriction on development within 20 m of the site boundary. However, the cumulative volume restriction of Part 32 is cumbersome (and not required under Part 12) and any overdevelopment of sites should be controlled by the above limitations and the 4 metre height limit currently applying in Part 12.

- 16.15 If the above change to create a new Part dealing only with schools is not implemented, the wording of Part 12 should be amended to clarify that these rights are available to County Councils since, as education authorities, these are responsible for undertaking works to schools. Although previous Urban Development Corporations have ceased to exist, it is understood that new bodies may be set up and no change is therefore proposed to the current references to these Corporations having Part 12 rights. The wording of Part 12 should be amended to clarify that the rights also apply to those carrying out works *'on behalf of the local authority'*. This would be consistent with Part 16 where those acting on behalf of Sewerage Undertakers are specifically given such rights.
- 16.16 Clear definitions and/or interpretation should be provided for certain terms that give rise to uncertainty including *'small ancillary building'*, *'waste'* and *'works/equipment'*. Floodlighting should be specifically excluded from the latter to ensure control over potential adverse effects, while information boards, and play equipment such as basketball nets etc should be specifically included. The term *'material affect on external appearance'* should be interpreted as applying to the site as a whole.
- 16.17 Size limits should be clarified in interpretation to the effect that only the 4 metre height limit applies to works/equipment rather than the volume control. It appears not unreasonable other than adjacent to a highway, that 4m fences should be allowed under this Part, if they were unlikely to cause adverse impacts e.g. a mesh fence around tennis courts etc., but this would also allow for a 4 metre high wall adjoining a dwelling. On this basis, text should be added to clarify that means of enclosure over 2 metres high are not included in Part 12 works. Given the potential impacts, new car parks should be specifically excluded but minor extensions of existing car parks (within a 10% limit say) could be permitted, but such a change would introduce greater complexity and it is probably better to exclude such works entirely.
- 16.18 A few waste authorities raised a concern on Class B, particularly the lack of any size limits on waste deposits, which has reportedly led to adverse impacts. This function is often contracted out by Councils. The absence of evidence of widespread problems makes it difficult to recommend change although there does appear scope for adverse impacts due to the lack of any limitations, and the imposition of some height limit, as applies to deposits for mining waste, could be considered further.
- 16.19 The recommended changes are, therefore:
- **relocate school-related development to a new Part of the GPDO dealing with schools only;**
 - **clarify that means of enclosure up to 4 metres high are not permitted by Part 12;**

- **make Part 12 rights conditional on avoiding adverse impacts on streetscape, as assessed against a Street Management Code; and**
- **if schools are retained within Part 12, clarify that permitted development rights apply to County Councils.**

16.20 Consideration could also be given to imposing height limits or otherwise restricting the scale of waste deposits under Class B.

16.21 These limited changes are not anticipated to give rise to a significant number of additional planning applications but should provide greater clarity and control.

Table 12: Assessment of recommendations for change to Part 12 of the GPDO

Proposed changes to Part 12: Development by local authorities	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√√ Broadly support policy aims on provision of essential public services and infrastructure.</p> <p>X some potential for adverse impacts on adjoining sensitive areas but controlled by small size thresholds.</p>	<p>√√√ moderate reduction in numbers of planning applications for minor but essential works, possibly in the order of 100s pa per LPA .</p>	<p>√√√ substantially reduce no. of planning applications and associated delays for hundreds of essential works annually.</p>	<p>XX some potential for adverse impacts on adjoining areas but controlled by size thresholds but only cases of harm reported relate to streetscape and conservation areas.</p>	<p>Remove numerous essential works from delays of planning control and from LPA workloads, with adequate controls in place against most adverse impacts. Main areas of concern are impact of street furniture on streetscape and uncertainty over who can use certain rights.</p>
1. Relocate schools from Part 12 to new Part dealing with Schools only.	<p>– no obvious effect on policy aims but improve consistency and uncertainty in use of GPDO.</p>	<p>– no change to numbers of planning application.</p>	<p>√ increased clarity on which rights and size limits apply to schools.</p>	<p>– no change.</p>	<p>Provides greater clarity and consistency within GPDO without significant drawbacks. Change recommended.</p>
2. Make rights conditional on avoiding impacts on streetscape.	<p>√√ generally supports policy aims on design quality and heritage protection.</p>	<p>X potential for moderate increase in no. of minor planning applications for street furniture but many avoidable through advance consultation and compliance with Street Management Code.</p>	<p>X would require more advance consultation with planning and conservation departments and compliance with Street Management Code.</p>	<p>√√ potential for significant improvements in streetscape/urban character.</p>	<p>Significant benefits to streetscape/urban character outweigh need for increased consultation and compliance with Code by users and possible initial moderate increase in nos. of applications. Change recommended.</p>

Table 12: *continued*

Proposed changes to Part 12: Development by local authorities	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Clarify that rights apply to County Councils.	– no obvious impacts.	– in theory minor reduction in planning applications but in practice rights already used by County Councils as education authorities.	√√ avoids delays for repeated minor public works including small buildings in schools/fire stations.	– no obvious impacts but should indirectly support public services.	Benefits to user and no adverse impacts. Would mainly be needed if schools are retained under Part 12 but could also apply to other County functions e.g. fire stations. Change recommended.
4. Control size of Waste Deposits in Class B.	√ broad support for waste policy aims	X possible minor increase in applications	X possible minor increase in applications	√ may help avoid adverse impacts on adjoining areas but little evidence of widespread problems.	Possible benefits to adjoining areas and amenity with very limited adverse impacts but lack of evidence of widespread problems does not support change. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high)

X indicates negative impact from X (low) to XXX (high)

– indicates neutral impact

pd = permitted development

CHAPTER 17

Part 13: Development by local highway authorities

- 17.1 Part 13 permits works by a local highway authority:
- a. on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development by virtue of Section 55(2)(b) of the Act; or
 - b. on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway.
- 17.2 The terms '*road*' and '*highway*' are not adequately defined in the GPDO or in the other legislation referred to by the GPDO although in the DETR guidance on householder development '*highway*' is indicated as including the carriageway and adjoining pavement as well as footpaths and bridleways.
- 17.3 These rights are complementary to the 1990 Act, Section 55(2)(b), which states that highway authority improvement and maintenance works do not constitute development if they are carried out on land within the boundaries of the road. This Part therefore applies to any works within the highway that may be considered to be development but also permits incidental works outside but adjoining the road boundaries. No additional restrictions apply in designated areas.
- 17.4 Users of Part 13, i.e. local highway authorities, indicated that they make almost daily use of their permitted development rights, often for emergency repairs and such works as traffic signage, cycle ways and roundabouts. All local highway authorities contacted stated that they consult with the local planning authority on works more significant than repairs and small changes and that, in any case, they are subject to control by their elected members.

ISSUES

- 17.5 Only 7% of responding planning authorities indicated that they had any difficulties in understanding or using Part 13 of the GPDO. Just under half of these considered that its wording needed clarification, leading to disagreements with highway authorities over the scope of '*improvement*' works. One authority reported problems over the definition of highway land.

- 17.6 Some 9% of planning authorities (15 in total) reported that Part 13 rights had led to some problems or adverse impacts. Approximately 58% of responding authorities expressed a view on whether Part 13 rights were too restrictive or otherwise. Of those, 81% considered them about right, 16% as too loosely defined, while only 3% indicated they were too restrictive. Specific concerns identified were:
- the unclear definition of the scope of improvement works allowed adjacent to the highway e.g. whether Part 13 allows for dualling of single carriageway roads, new roundabouts and provision of cycle tracks along roads for significant distances;
 - uncertainty as to whether Part 13 allows footbridges and new roads to be constructed at right angles to the highway and allows for disposal of waste from road works;
 - the impact of new road lighting columns and signage on the character of sensitive areas, such as conservation areas and National Parks. This view was shared by a number of environmental interest groups;
 - lack of consultation with planning authorities when extensive new lighting is introduced into an Area of Outstanding Natural Beauty; and
 - adequate definitions are needed of the terms '*road*', '*highway*', and '*adjoining the boundary of an existing highway*'. The absence of these currently leads to uncertainty, not just in Part 13 but in other parts of the GPDO. Examples are whether a footbridge over the highway, a new cycleway or an additional carriageway to a road comprises permitted development.
- 17.7 Several other parts of the GPDO contain restrictions on permitted development related in some way to proximity to the highway, and clear interpretation of such terms is essential.
- 17.8 Widespread concerns on the impacts of highway works, signage and related street furniture on streetscape and conservation areas have also been identified in previous research. A study by CABI in 2000 on threats to the historic environment proposed reducing, or removing, certain permitted development rights in conservation areas to deal with harm to the character of these areas from uncontrolled and uncoordinated works by local authorities and utility companies to resurface streets and install traffic signage, cabinets, kiosks and other street furniture.¹² A further study in 2002 proposed the replacement of permitted development rights affecting streetscape by a new Street Management Code, to be drawn up with the local authority, all undertakers and interested parties involved, and to provide guidance on factors such as location and design of street furniture and signage and highway reinstatement standards. Only permitted development complying with this Code would be allowed.¹³
- 17.9 In addition, a number of interest groups involved with design and the environment identified Part 13 development as too loosely defined and causing adverse impacts; these concerns related mainly to signage and poor quality repairs to pavements but obtrusive lamp standards in sensitive areas were also mentioned. One group considered all works with a visual impact on streetscape, and particularly in conservation areas, should be subject to prior approval.

¹² Achieving Quality Streetscapes, CABI, 2002.

¹³ The 2002 Designing Streets for People Report, The Institution of Civil Engineers, 2002.

- 17.10 Highway authorities consulted reported that Part 13 rights were essential where urgent highway repairs were needed, and that they generally worked well with no specific problems. While a requirement for prior approval was considered to be too onerous, if more control was necessary, a simple planning application with no public consultation would be preferred.
- 17.11 In addition, it is not clear why development within the highway is specifically identified as permitted development under this Part, since Section 55 of the 1990 Act makes clear that this is not development. The use of the word 'road' as well as highway in this section is also confusing.

SCOPE FOR CHANGE

- 17.12 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 13 and discussed below.
- 17.13 While Government policy aims aim to reduce private car travel, Part 13 permitted development rights relate more to ensuring safety and improving traffic flows. There is, however, some conflict between these rights and aims to improve design quality and protect the built environment, particularly with regard to streetscape.
- 17.14 These rights facilitate essential public works and infrastructure, often involving large numbers of facilities and required for safety reasons, to be carried out without delay. However, certain works adjoining highways do give rise to material planning issues. While it would not be beneficial overall to the planning system to bring all such works within planning control, additional restrictions have to be considered to help support Government aims on design and streetscape.
- 17.15 One of the main concerns on this Part is the effect of highway works and repairs on streetscape. However, as works within the highway are defined not to be development by Section 55 of the Act, any changes to introduce more formal control on local highway authorities in this regard would require an amendment to primary legislation. Some highway authorities work with planning sections to co-ordinate these works but this does not appear widespread.
- 17.16 There is clearly a need for local highway authorities to be sensitive to the potential impacts arising from use of Part 13 rights. Various measures to reduce adverse impacts have been identified in earlier studies, including smaller traffic signage and sharing of existing signage poles rather than adding new ones. Some authorities have prepared or adopted design guidelines, aimed at a more sensitive approach to highway works in conservation areas.¹⁴ This can encourage but not enforce a more desirable outcome.
- 17.17 Additional controls within sensitive areas should be considered. In order to fully control works affecting streetscape, consideration should be given to defining such works within the highway as development in primary legislation, but then making them permitted development in the GPDO. These permitted development rights

¹⁴ Suffolk Conservation Manual, Design Guidelines for Highway Works in Conservation Areas, Suffolk County Council, 2000.

could then be made conditional on having no adverse impact on streetscape or pedestrian flow, with this being assessed with reference to the Street Management Code applying to the area. The streetscape issue is considered in more detail at paragraph 39.53 and in Case Study 5. The implications of this change should not necessarily be a large increase in planning applications but would require greater consultation between local authority departments.

- 17.18 If this reclassification of highway works as development is made, there is then a case for requiring prior approval for the design, siting and materials of Part 13 works, both within and adjoining the highway, in a targeted way to protect the most sensitive landscape areas. Given the potential implications for the operation of the planning system, this should apply only in AONBs and National Parks and should only apply for those works which would have a significant impact. This would then be the basis for discussions between local planning authorities and local highway authorities as to what is significant. It is understood that this process already takes place in some National Parks and appears to work well (See Case Study 5). Again, this does not appear likely to produce a significant increase in workload for planning authorities in these areas, other than more discussions, but will offer significant benefits in consultation and control.
- 17.19 At the very least, if the above changes are not accepted, guidance should be provided in a User Guidance document to encourage consultation by highway authorities and compliance with the authority's own design guidelines on streetscape.
- 17.20 This Part, and other Parts of the GPDO, requires improved definitions or interpretation for terms such as '*highway*', '*road*', and '*adjoining the boundary of an existing highway*'. Clarification is also required on the scope of '*improvement*' to a road, to make clear that this does not extend to adding an additional carriageway for a significant distance although the EIA regulations may also act as control in this regard. Consistent use should be made of the term '*highway*' rather than '*road*' where the same meaning is intended.
- 17.21 Since the term '*highway*' is so important to the GPDO as a whole, a clear definition is needed and one along these lines is proposed:

"A highway is a way over which exists a public right of way for all members of the public and includes a carriageway, footpath, bridleway and thoroughfare giving access to the curtilage of a property or land and can be adopted or unadopted, made or unmade. For the purposes of the GPDO, highway does not include areas over which the public has no right of way and access ways to the side and rear of premises."

- 17.22 In addition, the term '*adjacent to highway*' needs to be clarified for this Part of Schedule 2 since this frequently leads to interpretation difficulties and appeals. It appears common practice among local planning and highway authorities to take a 2-3 metre distance from the back edge of the highway in interpreting this Part. While there may be some cases where this limit would not be appropriate or too restricting, it appears useful to have some clarity by setting a distance limit, and this could be set to cater for reasonable needs with a 5 metre limit giving more flexibility. While the precise limit could be the subject of further investigation, the following definition is suggested:

“For the purposes of Part 13 of the GPDO, adjacent to a highway includes any location within 5 metres from the edge of the highway as defined in Article 1.”

- 17.23 To avoid doubt, interpretation should also be provided to clarify that improvement works, such as a footbridge above and right angles to the highway where any part of it lies within 3 metres of the highway boundaries, fall within this Part.
- 17.24 The reference in Part 13 to works within the boundary of the highway, which is not development in any event, currently appears unnecessary. Unless these works are to be redefined as development as suggested above, this reference should be relocated to the interpretation of this part or to the User Guidance document, where the position should be clarified.
- 17.25 As with other Parts, it should be clarified that the agent or contractor carrying out works for the highway authority can exercise Part 13 permitted development rights by insertion of wording such as *‘by or on behalf of the local highway authority’*.
- 17.26 The recommended changes are therefore:
- **if highway works are defined as ‘development’, make these permitted under Part 13 but require compliance with a Street Management Code to ensure no adverse impact on streetscape and pedestrian flows;**
 - **within National Parks and AONBS, if highway works are defined as ‘development’, make these permitted under Part 13 but require prior approval on siting, design of highway works that are likely to have material effects;**
 - **provide a definition of highway within the GPDO; and**
 - **specify a distance limit to define land adjacent to the highway.**

Table 13: Assessment of recommendations for change to Part 13 of the GPDO

Proposed changes to Part 13	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights: <i>Development by local highway authorities required for maintenance or improvement of a road.</i>	<ul style="list-style-type: none"> ✓ road safety – potential for adverse impact on streetscape and on residential amenity of both major highway works and cumulative effect of minor works. – potential for adverse impact on transport policy. 	<ul style="list-style-type: none"> ✓/- reduction in large numbers of planning applications, the vast majority of which would be uncontentious and raise no planning issues. 	<ul style="list-style-type: none"> – reduction in regulatory burden on highway authorities. 	<ul style="list-style-type: none"> Potential for adverse impact on streetscape and on residential amenity from major works or from cumulative impact of large numbers of small works, including signs and other street furniture. 	<ul style="list-style-type: none"> Part 13 allows minor uncontentious development to be carried out by highway authorities, but there is potential for adverse impacts on the streetscape and on residential amenity, particularly from the cumulative effect of numerous minor works.
1. Improve definition of highway.	No effect.	<ul style="list-style-type: none"> ✓ reduce scope for misinterpretation and time spent by planning officers. 	<ul style="list-style-type: none"> ✓ reduce scope for misinterpretation and time spent discussing with planning officers. 	<ul style="list-style-type: none"> ✓ clarify rights of third party landowners. 	<ul style="list-style-type: none"> Minor change to assist understanding and reduce scope for misinterpretation, clarifying rights for third parties. Change recommended.
2. Clarify scope of improvement to exclude additional carriageway.	<ul style="list-style-type: none"> ✓ greater protection for landscape and adjacent landowners from major highway improvements. ✓ in line with transport policy. 	<ul style="list-style-type: none"> - small increase in number of planning applications. 	<ul style="list-style-type: none"> – clarifies scope of PDR to highway authorities. X will require closer working relationship with planning authorities. 	<ul style="list-style-type: none"> ✓ greater protection for landscape/townscape ✓ greater protection for neighbouring landowners and residential amenity. 	<ul style="list-style-type: none"> Would clarify that additional carriageway requires planning permission, giving greater protection to landscapes and neighbouring landowners/residents. Change recommended.

Table 13: continued

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Development by local highway authorities should be subject to compliance with a Street Management Code.	√√√ greater protection for landscape/townscape.	X to be effective, would require closer co-operation between highway and planning authorities and better enforcement – a resources issue.	X perceived increase in regulatory burden, but best practice highway authorities should not be impacted.	√√√ greater protection for landscape /townscape.	Significant benefits for the environment through better reinstatement and better planning, but would require change in primary legislation. Change recommended.
4. Development by local highway authorities in AONBs and National Parks to be subject to prior approval.	√√√ greater protection for landscape.	X to be effective, would require closer co-operation between highway and planning authorities and better enforcement – a resources issue.	X perceived increase in regulatory burden, but best practice highway authorities should not be impacted as this would formalise existing arrangements.	√√√ greater protection for landscape.	Significant benefits for the environment through better control, but would require change in primary legislation. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 18

Part 14: Development by drainage bodies

- 18.1 This Part relates to development by a drainage body in, on or under any watercourse and to land drainage works required for their improvement, maintenance or repair.
- 18.2 Drainage bodies are defined by the Land Drainage Act 1991 as including the Environment Agency, an internal drainage board (IDB) and any other body having power to make or maintain works for the drainage of land. The Environment Agency is responsible for major rivers and has its own, separate permitted development rights under Part 15. Part 14 rights are therefore primarily used by IDBs, which are statutory non-elected bodies responsible for the maintenance and operation of smaller watercourses, including minor rivers and drainage channels. There are currently about 200 such bodies in the UK, largely in lower lying areas.
- 18.3 There are no specific limitations or conditions applied to these rights. While they would normally be subject to EIA requirements, Article 3 indicates that this does not apply to improvement works carried out by a drainage body within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999.
- 18.4 The types of works typically carried out under Part 14 are maintenance of banks of rivers and drainage canals, constructing pumping stations and river outfalls and are typically exercised a few times a year by an IDB. Often such works are the replacement of existing facilities rather than new development.

ISSUES

- 18.5 A very small proportion (2%) of responding local authorities indicated that Part 14 caused them any problems while 7% indicated some difficulties in interpreting this Part. Some 42% of planning authorities expressed a view on whether Part 14 rights were too restrictive or otherwise. Of those, 86% considered them about right, 13% as too loose, while only 1% indicated they were too restrictive. It was not possible to identify any specific concern or examples of adverse effects from the exercise of Part 14 permitted development rights, although there was a general feeling by some local planning authorities that there were insufficient controls in place.
- 18.6 No concerns on Part 14 were raised by any interest groups. No cases were identified of Article 4 Directions being used to remove permitted development rights for drainage operations. One case was identified of EIA being sought for such works, in the Norfolk Broads.

- 18.7 Users of Part 14 permitted development rights considered these rights an important part of the flood defence process since there is often an urgent need for works to be undertaken. They did not identify any particular difficulties with the operation of this Part or the limitations within it, although some clarification of terms would be beneficial.
- 18.8 The absence of specific limitations on these rights is regarded by users as a reflection of the relatively small scale of works typically carried out by IDBs, in comparison with Part 15 works by the Environment Agency. The users also emphasised that IDB boards typically include local authority members and representatives of environmental bodies, adding to the level of control which applies over these rights.

SCOPE FOR CHANGE

- 18.9 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 14 and discussed below.
- 18.10 These rights support Government policy aims on flood protection. While there is some potential for conflict with aims to protect the countryside and sensitive landscape areas, this is limited by the relatively small scale of these works in most cases since they apply only to minor watercourses.
- 18.11 Part 14 permitted development rights often need to be carried out urgently and do not appear to give rise to material planning issues. The current rights appear to operate adequately for users and have not given rise to significant concerns by other parties. On this basis, there is no case for major change to the scope of these rights, provided suitable controls apply against adverse impacts.
- 18.12 Although there are no specific limitations on scale or appearance of works, there is the additional control set by Article 3 to consider whether EIA is needed under the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999. On this basis, a reasonable level of controls appears to be in place. The absence of any height restriction on development as applies in Part 15 is inconsistent but given the generally small scale of works under Part 14, this does not appear to cause problems. At the same time, imposing such a limit for consistency appears unlikely to unduly restrict essential works. On balance, absence of evidence of problems does not support change but should be given further consideration.
- 18.13 Improved interpretation would help clarify that improvement works that extend the footprint of the watercourse are covered by permitted development rights. The works that are covered by the EIA requirement include deepening, widening, straightening or otherwise improving any existing watercourse, removing obstructions to them or raising or widening drainage work. With the EIA control applying, it appears reasonable that widening of a watercourse to an extent that no EIA is needed (perhaps by a modest specified distance e.g. 2 metres) should be covered by permitted development rights.
- 18.14 As part of simplifying the GPDO generally and relating permitted development rights to types of development rather than to particular users where possible, there may be some benefit in combining Part 14 and Part 15 as separate classes under a new single Part to cover the wider category '*Development for Drainage and Flood Protection*'.

18.15 The recommended change is, therefore, to:

- **clarify that watercourse widening is permitted under Part 14 within specified size limits.**

18.16 Consideration could also be given to merging Parts 14 and 15 to bring similar functions under one category and help reduce the length of the GPDO.

18.17 These limited changes will not give rise to any change in numbers of planning applications required and would give greater clarity to users without any significant adverse effects.

Table 14: Assessment of recommendations for change to part 14 of the GPDO

Proposed changes to Part 14: Development by drainage bodies	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims on flood protection.</p> <p>X potential for adverse impacts with protection of countryside.</p>	<p>√ produce large reduction in numbers of planning applications for repeated often minor but essential works for small no. of LPAs.</p>	<p>√ reduce no. of planning applications and associated delays for essential works.</p>	<p>X some potential for adverse impacts on countryside and sensitive areas but small scale of works makes unlikely and no cases of harm reported.</p>	<p>Remove numerous repeated essential works from delays of planning control. Small scale nature of repeated works and controls under EIA regulations limit scope for harm.</p>
1. Impose height restriction on works as for Part 15.	<p>– would not affect flood policy aims since most works are understood to be small scale.</p> <p>√ supports aims to protect countryside and sensitive areas.</p>	<p>– no increase in numbers of planning applications since majority of Part 14 works are understood to be small scale and would not exceed height limit.</p>	<p>X perception of increased regulatory burden.</p> <p>X possible need for planning application in very few cases since majority of Part 14 works are understood to be small scale and would not exceed height limit.</p>	<p>– none since majority of Part 14 works are understood to be small scale anyway and no problems identified.</p>	<p>No significant benefits for policy aims or LPAs and some drawbacks for users. Main benefit would be greater consistency with Part 15 rights. On balance, no strong justification for change but could be considered further.</p>
2. Clarify that watercourse widening included under Part 14.	<p>√ Broadly support policy aims on flood protection.</p>	<p>√ possible small decrease in no. of planning applications for limited no. of LPAs.</p>	<p>√ small decrease in no. of planning applications and associated delays.</p>	<p>X some potential for adverse impacts on ecology but subject to EIA controls.</p>	<p>Small benefits to users in particular outweigh limited scope for adverse effects and clarify rights for others.</p> <p>Change recommended.</p>

Table 14: continued

Proposed changes to Part 14: Development by drainage bodies	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Merge with Part 15.	- none.	√ would reduce length of GPDO.	√ would reduce length of GPDO possibly helping ease of use.	- none.	Only minor benefits to affected parties. Main advantage would be to help reduce length of GPDO with similar rights in one location. No strong case for change on operational grounds but should be considered further as a drafting improvement.

√ indicates positive impact from √ (low) to √√√ (high)

X indicates negative impact from X (low) to XXX (high)

- indicates neutral impact

pd = permitted development

CHAPTER 19

Part 15: Development by the Environment Agency

- 19.1 An extensive range of permitted development rights applies to various works by the Environment Agency (EA) and largely relates to flood protection and maintenance of main watercourses. These rights are subject to various size and appearance limitations for plant or building alterations including height (15 metres for plant), floorspace (1,000 sq. metres), cubic content (25% of volume of original building), and the design and appearance of alterations to any building.
- 19.2 Article 3 indicates that the normal EIA controls do not apply to improvement works, carried out by a drainage body, within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999. It is understood that this is because EIA regulations apply under the latter legislation, as for Part 14. New buildings and reservoirs are specifically excluded and no special restrictions apply in designated areas such as Article 1(5) or 1(6) land, while Article 4 Directions do not apply to improvements, maintenance or repair of watercourses or drainage works.
- 19.3 These rights are typically used for both new flood protection works and maintenance of existing systems, including provision of pumping stations and sluice gates, re-shaping river banks and river dredging, and can be exercised thousands of times annually by a regional office of the EA. The purpose of such rights can be seen as allowing a high volume of repetitive works, often required to be carried out urgently, to be undertaken without delays.

ISSUES

- 19.4 Only 3% of the responding local authorities indicated that Part 15 caused them any problems or adverse effects while only 4% of authorities indicated any difficulties in interpreting this Part.
- 19.5 Some 42% of responding planning authorities expressed a view on whether Part 15 rights were too restrictive or otherwise. Of those, 86% considered them about right, 12% as too loosely defined, and only 2% indicated they were too restrictive. It was not possible to identify any specific problem or examples of adverse effects other than a general concern on the wide nature of the rights with few controls apparently applying to them.
- 19.6 No cases were identified of Article 4 Directions actually being used to remove permitted development rights for works by the EA, although it is understood that this has been suggested in negotiations by local planning authorities in some cases but never needed, as issues tend to be resolved. No examples were found of Part 15 rights being curtailed by the requirement for EIA.

- 19.7 The sole user of Part 15 rights, the Environment Agency, considers these rights as critical to its operations and has not identified any major difficulties with using them, or the limitations which apply. These rights are seen as particularly important in dealing quickly with flood breaches which cannot await planning permission. This flexibility is viewed as increasingly important now that many works are carried out by contractors for the EA and delays from planning applications could result in penalty costs on contracts.
- 19.8 The EA normally consults with bodies such as the planning authority and English Nature before carrying out permitted development works and always considers whether an EIA is required for them under the Land Drainage Regulations. This consultation process was indicated as working well with no obvious need seen by the user body for more formal prior approval procedures.
- 19.9 The main concern identified by the EA in relation to using Part 15 rights was the need for more consistent interpretation of these rights by different planning authorities, to avoid the need for unnecessary planning applications. For example, there have been different interpretations on whether improving a watercourse by extending its banks outwards is covered by the terms '*improvement*' and '*maintenance*', since such extension may be seen as outside the extent of the existing watercourse. This can be particularly important as EIA has been sought for extending river banks by only 2-3 metres and can result in lengthy delays.
- 19.10 Planning applications are also sometimes sought by planning authorities for the removal of flood/river banks. Again, guidance should be provided to clarify whether this is necessary or covered by Part 15.
- 19.11 The current size limitations are considered adequate by the EA and planning applications are normally submitted for structures over 15 metres high. There are likely to be more, higher structures in future if wind powered sluice gates and telemetry masts are introduced for environmental reasons.

SCOPE FOR CHANGE

- 19.12 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 15 and discussed below.
- 19.13 These rights cover essential works that support Government policy aims on flooding. While there is some potential for conflict with aims to protect the countryside and sensitive landscape areas, this is limited by the size and other limitations that apply as well as by the EIA regulations. On balance, these rights are considered to make a positive contribution to policy aims.
- 19.14 Part 15 permitted development rights provide for numerous routine, as well as urgently required, public works. The current rights appear to work well for the user and have not given rise to significant levels of planning issues or impacts or concerns by local authorities and other parties. With the various limitations and controls which apply, there are no reasons for significant change to these permitted development rights.

- 19.15 However, there would be benefits in better interpretation of certain points, for example to clarify that removal of flood or river banks is permitted development under Part 15 where no EIA is required.
- 19.16 In addition, as with Part 14, clarification should be provided that works involving minor widening of the footprint of the watercourse are covered by permitted development rights. The works that are covered by the EIA requirement include deepening, widening, straightening or otherwise improving any existing watercourse, removing obstructions to them or raising or widening drainage work. Deepening within the watercourse boundaries would clearly fall within Part 15 rights. With the EIA control applying, it appears reasonable that widening of a watercourse to an extent that no EIA is needed (perhaps by a modest specified distance e.g. 2 metres) should be covered by permitted development rights.
- 19.17 This interpretation has been accepted by some local planning authorities in affected areas. While widening of watercourses, affecting their banks, could potentially give rise to ecological impacts, controls are provided by the requirement for Environmental Assessment under the Land Drainage regulations.
- 19.18 As indicated in relation to Part 14, there may be some benefit in combining Part 14 and Part 15 as separate classes under a new single Part to cover a category named *'Development for Drainage and Flood Protection'*. This would bring the rights of two broadly similar functions together, allowing simpler cross references to other restrictions in Article 3. Provided the same restrictions are carefully applied to each body in the new Part, this change will give no greater rights to either body than they currently have.
- 19.19 The recommended change is, therefore, to:
- **clarify that watercourse widening is permitted under Part 15 within specified size limits.**
- 19.20 Consideration could also be given to:
- merging Parts 14 and 15 to bring similar functions under one category and help reduce the length of the GPDO.
- 19.21 These limited changes will not give rise to any change in numbers of planning applications required and would give greater clarity to users without any significant adverse effects.

Table 15: Assessment of recommendations for change to Part 15 of the GPDO

Proposed changes to Part 15: Development by Environment Agency	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√√ Broadly support policy aims on flood protection.</p> <p>X some potential for adverse impacts on aims for protection of countryside but controlled by EIA regulations and size limits.</p>	<p>√√ large reduction in numbers of planning applications for repeated often minor but essential works, possibly in the order of 100 per LPA .</p>	<p>√√√ reduce no. of planning applications and associated delays for essential works.</p>	<p>X some potential for adverse impacts on countryside and sensitive areas but controlled by EIA regulations and size limits and few cases of harm reported.</p>	<p>Remove numerous essential works from delays of planning control.</p> <p>Size thresholds and controls under EIA regulations limit scope for harm.</p>
1. Clarify that watercourse widening included under Part 15.	<p>√ Broadly support policy aims on flood protection.</p>	<p>√ small decrease in no. of planning applications for limited no. of LPAs.</p>	<p>√√ moderate decrease in no. of planning applications and associated delays.</p>	<p>X some potential for adverse impacts on ecology but subject to EIA controls.</p>	<p>Small benefits to users in particular outweigh limited scope for adverse effects and clarify rights for others.</p> <p>Change recommended.</p>
2. Merge with Part 14.	<p>- none.</p>	<p>√ would reduce length of GPDO.</p>	<p>√ would reduce length of GPDO possibly helping ease of use</p>	<p>- none</p>	<p>Only minor benefits to affected parties. Main advantage would be to help reduce length of GPDO with similar rights in one location. No strong case for change on operational grounds but should be considered further as a drafting improvement.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 20

Part 16: Development by or on behalf of sewerage undertakers

- 20.1 Part 16 applies to water and sewerage undertakers appointed in 1989 and permits development including the provision, improvement, maintenance or repair of sewers and other apparatus not above ground level, and any building, plant or machinery etc. over or under land and required for survey or investigation. It also allows any other development on operational land, excluding new buildings but including building extension or alteration.
- 20.2 As for Part 15, development is not permitted for extension or alteration of buildings if design or external appearance would be materially affected, or if specified height, cubic content and floorspace limits would be exceeded. For plant or machinery, the greater of a height of 15 metres, or the height of anything replaced, must not be exceeded. Any development for survey or investigation purposes must be removed and land restored on completion of these activities. However, no specific restrictions apply in designated areas.
- 20.3 These rights are primarily used by water companies which have a sewerage function, the original intent being to enable these essential works, involving large numbers of developments, to proceed without delays. Typical types of development carried out under these rights include laying of pipelines, installing plant and equipment on operational land, sewage treatment works, and site roads. These rights are exercised several hundred times a year by a typical sewerage undertaker, amounting to up to 90% of its operational development, and greater usage is anticipated due to increasing environmental regulation. These undertakers also make use of Part 2 and Part 4 rights and those companies which also deal with water supply also use Part 17 Class (E) – water or hydraulic power undertakings.
- 20.4 An environmental audit is typically undertaken by users in the early stages of a project, which is also screened internally to identify any requirements for EIA. Local planning authorities are often consulted before rights are exercised.

ISSUES

- 20.5 Only 5% of responding local authorities indicated that Part 16 caused them any problems while only 8% indicated difficulties in interpreting this Part. Some 45% of responding planning authorities expressed a view on whether Part 16 rights were too restrictive or otherwise. Of those local authorities expressing a view, 78% saw Part 16 permitted development rights as about right, 16% considered them too loosely defined, and only 6% indicated that they were too restrictive.

- 20.6 The only specific concern identified by planning authorities was the significant impacts of plant up to 15 metres high on operational land within sensitive locations, such as a National Park. Sewage and Water Treatment (SWT) plants were singled out as examples of large structures of this type. One authority called for more consistent treatment to allow small buildings housing equipment under Part 16 that are allowed under Part 17 (Class E). Another sought explicit clarification on whether such structures as concrete walled sludge tanks should be interpreted as buildings or plant.
- 20.7 Only two users of Part 16 rights responded but both of these considered these rights critical to their operations, generally operating well with no major difficulties in interpretation identified, but too strictly defined in some areas. While no major changes were sought, there were a number of concerns and areas where the need for some relaxation was indicated:
- Small '*kiosk*' structures housing control equipment for sewage treatment are not permitted under Part 16 as, having walls to protect equipment, they are interpreted as being buildings even though they are allowed under Part 17(E); the need to make a planning application for these common structures involves significant work and is anomalous when much larger plant is permitted development.
 - Local authorities increasingly seeking to remove, without clear justification, permitted development rights by condition when permitting any additional area of operational land.
 - Lack of clear definitions on terms such as '*long distance pipeline*' and '*aqueduct*', particularly to clarify that the latter did not carry sewage.
 - Inconsistency in interpretation between different local authorities including what constitutes operational land and a need to update the 1989 purchase date limit for statutory undertakers' land to be classified as operational.
 - Raised manholes are sometimes required because of the gradient of the land, but are not permitted development when not on operational land; manholes which are not raised can be easily covered over and damaged by agricultural vehicles.
 - Disputes with local authorities over whether EIA is required for some development and lengthy delays before such requirements are identified.
 - Delays in the consultation process with local authorities.
 - The practice of some authorities to seek Section 106 obligations to control reinstatement and the construction method for works carried out under permitted development, leading to additional delays and costs, and seemingly going against the spirit of having permitted development rights.
- 20.8 A number of cases were identified of Part 16 permitted development rights (e.g. pipelines) being removed by the requirement for EIA but no examples of Article 4 Directions being applied to works under this Part.

SCOPE FOR CHANGE

- 20.9 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 16 and discussed below.
- 20.10 These rights have some potential for conflict with aims to protect the countryside and sensitive landscape areas, but this is limited by the size and other limitations that apply as well as by the EIA regulations. Against this, these rights support broad Government aims to ensure essential public infrastructure and services are in place, particularly those essential to health. These rights can also be seen as according with general sustainability aims which promote waste recycling. Overall, the balance in terms of Government policy aims is considered to be positive.
- 20.11 While these permitted development rights can give rise to some material planning issues, they relate to provision of essential services and infrastructure often required urgently or in emergencies. These rights are exercised by a regulated body and there appear to be adequate controls against adverse impacts through the size limitations and the EIA regulations, in addition to the internal screening carried out by the undertakers. Very few adverse impacts of these rights were identified by local authorities, users or interest groups. These rights also reduce the need for a sizeable number of routine planning applications.
- 20.12 On this basis, there is a strong argument for retaining these rights and no case has been made for major changes to this Part. While Part 16 provides broadly similar types of rights to Part 17 (E), and some undertakers use both, they serve different types of development and there is no obvious benefit in amalgamating these elements.
- 20.13 No requirement for prior approval is proposed for Part 16 on the basis that current informal consultation procedures appear to work effectively without giving rise to significant adverse impacts.
- 20.14 To reduce inconsistency, the interpretation should be amended to enable small kiosk-type buildings, whose sole function is to protect equipment, not to be considered as buildings and therefore allowed under Part 16. This should be subject to the same size limits as in Part 17 (E), where such structures are already permitted. This issue was raised by both users and planning authorities and would provide a modest reduction in planning applications for minor works with no significant impacts.
- 20.15 A clearer interpretation is needed for the term '*aqueduct*' to clarify that it specifically does not apply to sewerage operations. Improved guidance on the meaning of '*long distance*' in relation to pipelines may also help interpretation of the application of EIA requirement to such development.
- 20.16 As discussed in Chapter 39, the User Guidance document should also advise against imposition of conditions, or seeking Section 106 Agreements, to generally remove or control permitted development rights on new operational land without strong justification as well as indicate circumstances where such an approach is appropriate.

20.17 The only recommended change is, therefore, to:

- **specify that small buildings under 29 m³ to house control equipment are permitted under this Part.**

20.18 This limited change may provide a small reduction in numbers of planning applications submitted with no significant adverse effects on the environment.

Table 16: Assessment of recommendations for change to Part 16 of the GPDO

Proposed changes to Part 16: Development by or on behalf of sewerage undertakers	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√√ Broadly support policy aims on provision of essential public services and infrastructure.</p> <p>X some potential for adverse impacts on open countryside and sensitive areas but controlled by EIA regulations and size thresholds.</p>	<p>√√ moderate reduction in numbers of planning applications for repeated minor but essential works, possibly in the order of 50 pa per LPA.</p>	<p>√√√ substantially reduce no. of planning applications and associated delays for thousands of essential works annually.</p> <p>√√ moderate reduction in no. of planning applications and associated delays for essential but minor works.</p>	<p>X some potential for adverse impacts on adjoining areas but controlled by EIA and size thresholds and few cases of harm reported.</p>	<p>Remove numerous essential works from delays of planning control and from LPA workloads, with adequate controls in place against adverse impacts.</p>
1. Include small kiosk type buildings (under 29 cu. m.) to house control equipment.	<p>X some potential for conflict with policy aims on protection of countryside and sensitive areas but limited by the very small scale of structure.</p> <p>√ generally supports policy aims on provision of essential public services and infrastructure.</p>	<p>√ small reduction in no. of minor planning applications for many LPAs.</p>	<p>√ provides consistency with Part 17 rights where water undertakers can erect identical small buildings.</p>	<p>X some potential for adverse impacts on open/sensitive areas but limited by very small size limit</p>	<p>Remove numerous minor essential works from delays of planning control and provides greater consistency within GPDO without significant drawbacks. Change recommended.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 21

Part 17: Development by statutory undertakers

- 21.1 Part 17 of the GPDO permits a wide range of types of development when carried out by bodies carrying out their functions under statutory powers, i.e. '*statutory undertakers*'.
- 21.2 Although not defined in the GPDO, Section 262 of the 1990 Act defines the term '*statutory undertaker*' as a body authorised by any enactment to carry on one of the following undertakings: railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier, lighthouse and the supply of hydraulic power. Article 1(2) of the GPDO expands on this definition to specifically include universal service providers (e.g. the Post Office), the Civil Aviation Authority, the Environment Agency, any water undertaker, any public gas transporter, and any licence holder within the meaning of section 64(1) of the Electricity Act 1989. Although not listed there, relevant airport operators also fall within this category.
- 21.3 All statutory undertakers consulted in this study considered they provide an essential public service, only carry out development necessary for them to be able to fulfil their statutory duty and that it is irrelevant whether they are a private or a public company. This issue is discussed in more detail within the sections considering each class of permitted development.
- 21.4 As a general point it is useful to note that development by statutory undertakers has fewer restrictions than found in many other parts of the GPDO. For example, no special restrictions apply in designated areas such as Article 1(5) or 1(6) land other than for electricity development.
- 21.5 Part 17 is one of the longest Parts of the GPDO, including 10 classes of development, relating to different types of statutory undertaker. In general, each class allows a specific statutory undertaker to carry out development required to fulfil its statutory duties, without having to seek planning permission. The following sections consider issues identified under each class of development. Since respondents to the consultation process did not always identify specific classes within Part 17 which gave them concerns, reference is also made in this analysis to the 1997 research which specifically examined the permitted development rights of statutory undertakers.¹⁵

¹⁵ The Use of Permitted Development Rights by Statutory Undertakers, DETR, July 1997.

GENERAL ISSUES FOR STATUTORY UNDERTAKERS

- 21.6 There are a number of general issues that apply to statutory undertakers. A number of concerns were raised by local planning authorities and interest groups on the lower level of restrictions applying to permitted development rights for statutory undertakers compared with other users. There was a feeling that while such a difference may have been justified for public bodies carrying out essential works, it should not apply to what are now largely private companies. The key issues were the effects of statutory undertakers' development in national parks and conservation areas, as well as on streetscape generally.
- 21.7 Consideration has therefore been given to whether there is a need for additional restrictions on the permitted development rights of statutory undertakers. Despite the limited number of restrictions in the GPDO, a number of other controls exist including the Article 4 Direction and EIA regulations. Circular 9/95 makes it clear that undertakers should consult with local authorities and the public prior to carrying out development likely to affect them significantly, and most of the undertakers appear to do this. Codes of Practice also exist for many undertakers although these are not enforceable.
- 21.8 A 1997 Government research study found that permitted development rights for statutory undertakers generally operated satisfactorily with no need identified for wholesale change.¹⁶ However, the GPDO generally was seen as being complex and difficult to understand, and concerns were noted on the level of development allowed to statutory undertakers on operational land, without controls on siting, design, scale etc; and the limited constraints on aviation buildings. Inconsistency was found between the permitted development rights of different statutory undertakers, and between statutory undertakers' rights and other categories of the GPDO. Further concerns were the lack of controls over design and siting of street furniture/infrastructure, the poor quality of reinstatement works after highway repair and installation of utilities, the adverse effects of telecommunications works, the difficulty of securing Article 4 Directions and the operation of consultation procedures. A need was identified for comprehensive guidance on permitted development rights and their interpretation; to amend the GPDO to deal with anomalies, clarify definitions and improve its format; improve consultation arrangements; provide Codes of Practice covering design, trees, communications and re-instatement works and review the Article 4 Direction process.
- 21.9 Impacts arising from the permitted development rights of statutory undertakers and other bodies has been identified as a particular issue. A 2002 English Heritage study on streetscape identified problems arising from permitted development works by utility companies to the highway/footway, including the siting of telephone boxes and equipment, without effective controls or permanent reinstatement works.¹⁷ Proposed measures to address these issues included addressing poor quality reinstatement work of openings in streets and the time of disruption involved by raising inspection charges, using fines and time-charging, changes to regulations to allow for smaller traffic signs related to lower vehicle speeds; and giving local authorities responsibility for all roads and streets other than motorways, rather than the current two tier approach found in some areas (see Annexe 5).

¹⁶ The Use of Permitted Development Rights by Statutory Undertakers, DETR, July 1997

¹⁷ Power of Place: The Future of the Historic Environment, English Heritage, 2000.

- 21.10 Another research study in 2002 proposed the replacement of permitted development rights affecting streetscape by a new Street Management Code, to be drawn up with the local authority, all undertakers and interested parties involved, and to provide guidance on factors such as location and design of street furniture and signage and highway reinstatement standards. Only permitted development complying with this Code would be allowed.¹⁸ This approach is explored in more detail at paragraph 39.52 and in Case Study 5.
- 21.11 Other research by CABI in 2000 on threats to the historic environment found that the character of conservation areas was being harmed by the effects of certain permitted development rights.¹⁹ Reducing, or removing, certain permitted development rights in conservation areas was proposed to deal with problems such as uncontrolled and uncoordinated works by local authorities and utility companies to resurface streets and install traffic signage, cabinets, kiosks and other street furniture.
- 21.12 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 17 and discussed below.

Class A: Railway or light railway undertakings

- 21.13 Class A permits development by railway undertakers on their operational land, required in connection with the movement of traffic by rail, except if that development consists of or includes the construction of a railway or hotel, railway station or bridge, or the construction otherwise than wholly within a railway station of:
- an office, residential or educational building, or a building used for industrial process; and
 - a car park, shop, restaurant, garage, petrol filling station or other building or structure provided under transport legislation.
- 21.14 The interpretation of Class A clarifies that any alterations or reconstructions that materially affect the external appearance of buildings or structures are not permitted development.
- 21.15 There are no requirements in Class A for railway undertakers to notify local planning authorities or seek their prior approval, although the railway undertakers consulted indicated that they normally notify local planning authorities, in line with Circular 9/95, when they intend to exercise permitted development rights.
- 21.16 Railway undertakers typically use permitted development rights for new buildings, building refurbishments, infrastructure changes, installation of equipment and retail facilities within stations. They also make use of Part 11 of the GPDO for works not covered by Part 17. As an example, Network Rail exercises Part 17 and Part 11 rights up to 1,000 times annually.

¹⁸ The 2002 Designing Streets for People Report, The Institution of Civil Engineers, 2002.

¹⁹ Achieving Quality Streetscapes, CABI, 2002.

ISSUES

- 21.17 Only 5% of responding local authorities reported any problems with understanding or using Class A or identified any impacts arising from it. The following issues were raised:
- Uncertainty as to who is a railway undertaker for the purposes of the GPDO.
 - The inadequate definition of terms such as '*operational land*' and '*wholly within a station*'.
 - Uncertainty on the relationship of Part 17 Class A with Part 11 of the GPDO;
 - Whether telecommunications masts for railways and storage/loading of ballast are permitted development.
 - The insufficient controls available generally with regard to railway development.
- 21.18 Only 2% of responding planning authorities considered that Class A permitted development rights specifically were too loosely defined and raised the following concerns:
- The lack of accountability of railway undertakers.
 - The visual impact of telecommunications masts along railway lines, for which there is no height restriction.
 - The visual/noise impacts on residential amenity of using railway sidings for ballast storage.
 - The general impact of railway development on the Green Belt and other areas of environmental quality.
- 21.19 The railway undertakers using Class A all reported frequent and in some cases, daily use of their permitted development rights. These rights were seen as increasingly important in the context of the undertakers' urgent requirement to repair and renew the UK's rail network, to meet growing freight and passenger demand for new and improved facilities and services, and to introduce new safety equipment, including telecommunications masts. Any reductions in current Class A rights were seen as likely to have serious implications for upgrading the rail network. The following specific issues were also raised:
- Disputes with planning authorities on the extent of operational land and whether a development is '*wholly within a station*'.
 - The inconsistent approach by local planning authorities on similar projects across the UK, leading to delay.
 - A request to allow new railway sidings as permitted development.
 - Railway vehicle washing/maintenance sheds being excluded from Part 17 as they are considered to accommodate an industrial process, unlike their treatment in the Scottish GPDO.

21.20 Despite the absence of specific limitations on Class A rights, railway undertakers noted that some control was available to planning authorities since many stations were listed and there is a requirement to obtain listed building consent for any development affecting such buildings or their settings.

SCOPE FOR CHANGE

21.21 These permitted development rights relate to provision of essential public services and infrastructure and clearly support Government aims to modernise rail infrastructure, encourage rail travel and improve rail safety. They also have some potential for conflict with protection of built and rural environments, heritage issues and residential amenity although they appear to give rise to comparatively few material planning issues. There are few controls against adverse impacts through the size limitations and the potential control provided by EIA regulations has not always been effective. On balance, these rights should be retained on the basis of an overall positive contribution to policy aims. However, consideration has been given to additional controls to address the concerns raised.

21.22 Clarity on who can use Class A rights is not helped by lack of any definition of '*railway undertakers*' in the GPDO. The definition in Section 262 of the 1990 Town and Country Planning Act states that railway undertakers are persons authorised by enactment to carry out railway undertakings. Historically, British Railways was a nationalised industry and the principal railway undertaker but since privatisation the number of bodies which could be defined as railway undertakers has increased. Network Rail owns virtually all operational railway land and is responsible for the maintenance and repair of the network and is clearly a railway undertaker. Train operating companies (TOCs) and freight operating companies (FOCs) generally lease operational land from Network Rail, under franchise from the Strategic Rail Authority to run passenger and freight train services and railway stations.

Case Study:

South Shropshire Council used an Article 4 Direction to remove Part 17 permitted development rights from sensitive operational railway land in Ludlow, due to concerns on the visual impact of a proposed 30m high mast close to the historic town centre and Conservation Area. The mast was required to upgrade the rail communication and safety system. The Article 4 Direction was seen as a 'last resort' by the authority and involved significant time and costs. Its use was only possible as the undertaker notified the local authority of the proposal, although it was not required to do so. The undertaker subsequently found an alternative site for the mast.

21.23 Based on consultation responses, the majority of TOCs and FOCs appear to be accepted by local planning authorities as railway undertakers for the purposes of carrying out development permitted by Class A. The Strategic Rail Authority reported that, in the future, special purpose vehicles (SPVs) may be set up to carry out railway development. These SPVs are likely to consist of some or all of the following: Network Rail, SRA, TOCs, FOCs and construction companies. The current definition of railway undertaker would appear to exclude the SPVs who, in future, may carry out railway development. It may, therefore, be appropriate to extend permitted development rights to SPVs, who are carrying out works on behalf of a railway undertaker. This would assist in delivering Government policy of improving the rail network.

- 21.24 The Scottish GPDO grants permitted development rights to *'railway undertakers and their lessees'*, which would clarify who benefits from Part 17 Class A, as it would clearly extend rights to TOCs and FOCs, who lease operational land from Network Rail. An alternative would be to provide a definition of a railway undertaker within the GPDO and the 1990 Planning Act as including other relevant undertakers.
- 21.25 Both local planning authorities and railway undertakers reported problems in agreeing on the extent of operational land, particularly where land is owned by Network Rail but not currently used for operational purposes. The undertakers stated that, if a dispute occurs, a land ownership plan can be produced which defines the boundaries of railway land and this is usually accepted by local planning authorities. Where railway land is not currently used for operational purposes, permitted development rights under Part 11 can often be used. As few issues or problems appear to arise in practice, there is no reason for altering the definition of operational land with respect to railway development.
- 21.26 Both local planning authorities and railway undertakers reported disputes on whether a development is *'wholly within a station'*. A station is not defined in the GPDO but can be considered, for example, as comprising just the station buildings and platforms, or the entire demise of the station including the station forecourt, transport interchange area and car parks. Particular problems reported were whether extending the length of platforms constituted permitted development within a station and whether car parking facilities outside the station building itself, but within the station leasehold area, were permitted development.
- 21.27 In both examples given above, it is clear that these types of development could potentially give rise to material planning issues, such as impact on neighbouring residential amenity and traffic generation and it is questionable whether they should be permitted development. In the case of car parks, these are specifically excluded from permitted development unless wholly within a station. Since the extent of platforms can be used to define the extent of the station itself, extension of platforms may not fall within Class A rights, although Part 11 rights may apply. To avoid disputes over the extent of a station boundary, consideration was given to defining *'wholly within a station'* to specifically exclude extensions to the length of platforms under Class A. However, on balance, no change is proposed since no widespread problems were identified and the current wording allows some flexibility for local authorities to control any effects.
- 21.28 There is some concern on the use of Part 11 by railway undertakers, which reflects the fact that most railways were developed by Acts of Parliament. This would appear to allow railway undertakers more flexible permitted development rights than given by Part 17 Class A alone. This issue is considered under Part 11.
- 21.79 Class A allows development on operational land, *'required in connection with the movement of traffic by rail'*, subject to specific exclusions. Disputes arise on whether development actually meets this criterion. Specific examples raised were the installation of telecommunications masts for a safety system and the storage of ballast on railway sidings, both of which were eventually agreed to be required for the running of a railway. However, Class A does not impose any limitation on these types of development, forcing a local planning authority to apply an Article 4 Direction to restrict a 30 metre high telecommunications mast. Following consideration of a specific case study (Case Study 7, Annexe 7), a restriction on the height of telecommunications masts,

in line with the 15 metre height restrictions in Part 24 would be more consistent, accord better with policy aims and remove the need to resort to Article 4 Directions. While the railway undertaker notifies local authorities on such masts, this is a voluntary process. Given the need for such masts for rail safety, it is considered that this height limitation should apply only in sensitive landscape areas, with prior approval needed on siting and appearance of masts below 15 metres. It is understood that, since the commencement of this study, a private members bill has been introduced in parliament proposing changes along these lines to Part 17 and Part 11 of the GPDO.

21.30 In the case of railway land used for ballast storage, to minimise transport of materials for track repairs, this involved, for example, night time activity and visual impacts near Green Belt and residential areas. The local planning authority sought an Article 4 Direction and to require an EIA in order to remove permitted development rights but neither control was accepted by the Secretary of State. While it is not clear that this is other than an isolated case, it suggests the need to consider whether some restriction of Class A development should apply within a specified distance of residential properties.

21.31 Although not recommended as a change at this stage, further consideration should be given to improved interpretation to the effect that buildings to allow washing and maintenance of railway vehicles are not related to an industrial process and therefore fall within Class A, as they do in the Scottish GPDO. This would have some potential for adverse impacts on residential amenity, although this may perhaps be addressed by a condition requiring a minimum distance e.g. 50 metres from residential premises. The operation of this provision in Scotland should be investigated before any change is considered in the English GPDO.

21.32 The recommended changes to this Class are, therefore:

- **widen the definition of railway undertaker to include lessees; and**
- **exclude railway telecommunications masts in Article 1(5) land from Class A when above 15m in height and require prior approval where below 15m.**

Class B: Dock, pier, harbour, water transport, canal or inland navigation undertakings

21.33 Class B permits development on operational land, by undertakers and lessees, for shipping and for dock, pier or harbour-related activities (for passengers, livestock or goods), or connected with the movement of traffic by canal or inland navigation, or any railway forming part of the undertaking.

21.34 There are similar exclusions as for Class A, including a hotel, a bridge and other buildings not required in connection with the handling of traffic, and restrictions on the buildings or uses allowed other than wholly within the limits of a dock. No specific restrictions apply in designated areas.

ISSUES

- 21.35 No planning authorities reported any problems with understanding who is a statutory undertaker for the purposes of Part 17 Class B, as it appears that most canals, harbours and ports are long-standing facilities, with readily identifiable boundaries and in the control of a single port authority (or similar). A number of planning authorities, however, reported a problem in agreeing a definition with Class B undertakers as to the extent of their operational land.
- 21.36 Only 2% of responding local planning authorities raised particular problems with the impact of Class B permitted development rights and considered that these rights were too loosely defined. This small percentage may reflect most local planning authorities not having a harbour or a port within their area. The specific problems raised were:
- insufficient control over non-port uses within ports, i.e. processing of goods carried out on operational land under permitted development rights;
 - impact on residential amenity of storage of materials, e.g. coal within ports; and
 - insufficient control on the scale and siting of buildings close to residential properties.
- 21.37 Five responding harbour and port authorities responsible for a single port reported no problems with understanding or using this Part. Two organisations, however, with more than one port within their control reported difficulties in understanding and using this Part, mainly because their ports were located in different planning authorities, which interpreted the GPDO differently.
- 21.38 In terms of the current scope of permitted development rights, responding users indicated that Class B allowed them to carry out the majority of their operational developments, with the following exceptions:
- Installation of security fencing and other measures not allowed for within Class B, while Parts 2 and 33 do not allow the necessary heights of fencing and CCTV cameras.
 - Delays in local authorities responding to non-statutory consultation on proposals.
 - Inconsistent approaches by different local planning authorities on similar projects.
 - Land acquired after 1968 for operational purposes does not benefit from permitted development rights unless there exists a planning permission for its use as operational land (Section 264 of the 1990 Act); this causes problems for undertakers when they acquire historical operational land.
 - Removal of permitted development rights when a development requires EIA.
 - Works urgently required to upgrade port facilities to support the UK economy.

Scope for Change

- 21.39 These permitted development rights support water transport operations and indirectly can be considered as contributing to economic competitiveness, although there is some scope for adverse impacts on the environment. However, there appears to be

very limited conflict with policy aims and no significant impacts were identified by local authorities, users or interest groups. At the same time, these rights relate to the operation of essential infrastructure and appear to give rise to very few material planning issues despite the absence of specific limitations.

- 21.40 On the issue of whether processing of goods is Class B permitted development, it would appear that as this is not strictly required in connection with shipping and the movement of traffic, it is not permitted development. While this was not identified as a widespread problem, to aid interpretation *'industrial processes'* should specifically be excluded from Class B.
- 21.41 The impact of Class B rights on residential amenity appears to arise from large developments, such as warehouses and the storage of materials, in close proximity to residential properties. In such cases, prior consultation with the local planning authority could prevent this but relies on good working relationships between the port authority and the planning authority. The EIA regulations offer some control but may not catch all such developments. There may be a case for restricting such rights within specified distances of residential properties, as applies to some agricultural development under Part 6, but this may severely constrain smaller harbours and ports surrounded by residential properties and a blanket restriction may not be appropriate or address the problem. On balance, given the absence of widespread evidence of harm, it is considered that the problem does not merit a change to the GPDO.
- 21.42 There is an argument for extending permitted development rights within Class B to include security fencing and pole-mounted CCTV cameras as they are reasonably required in connection with shipping and the movement of traffic and goods, although they would need to be subject to an appropriate height restriction. However, there is potential for impacts on nearby residential premises and sensitive areas.
- 21.43 The current definition of operational land in the 1990 Act states that land acquired since 1968 for operational purposes is not operational land for the purposes of the GPDO, unless there is a planning permission for its use as operational land. Only one undertaker, British Waterways, reported a problem with this definition as it has acquired a number of inland waterways and navigation areas since 1968, such as the London Docklands and the Tees Navigation. These two examples are historic waterways, predating the planning system and therefore not benefiting from permitted development rights. A planning application for change of use to make all these areas operational land would involve a very large area across several planning authorities. While this situation appears anomalous, no general change to the GPDO is warranted to address these quite specific cases.
- 21.44 The recommended changes to this Class are:
- **include security fencing and pole-mounted CCTV cameras as Class B (Ports) permitted development, where required in connection with operational activity and subject to an appropriate height restriction; and**
 - **clarify that industrial processes on operational port land are not permitted development.**

Class C: Works to inland waterways

21.45 Class C permits:

- the improvement, maintenance or repair of an inland waterway (other than a commercial waterway or cruising waterway) to which Section 104 of the Transport Act 1968 (classification of the Board's waterways) applies; and
- the repair or maintenance of a culvert, weir, lock, aqueduct, sluice, reservoir, let-off valve or other work used in connection with the control and operation of such a waterway.

21.46 No exclusions or limitations are indicated, nor are there any requirements for prior approval or any special restrictions in designated areas.

21.47 The main user of Class C appears to be British Waterways, which has statutory duties to maintain the majority of inland waterways. This organisation reported no particular problems with Class C, which it uses on a regular basis.

ISSUES

21.48 No planning authorities reported any difficulty in understanding or interpreting Class C, and none identified any problems with the impact of this type of permitted development. This is consistent with the 1997 DETR research, in which 70% of local authorities considered Class C to be sufficiently defined, with only 5% considering it too widely defined. The only issues raised at that time were difficulties with the definition of statutory undertaker and whether permitted development applied to leisure activities on waterways.

SCOPE FOR CHANGE

21.49 These permitted development rights support an important transport, heritage and recreational resource. Since some canals are part of sensitive areas, there is some scope for conflict with heritage and built and rural environment protection aims, but the relatively minor nature of the works permitted limits such conflicts. Indeed, no adverse impacts were identified by local authorities, users or interest groups. Based on this, there would appear to be no reason for change to this class of permitted development. **No changes are therefore recommended to this Class.**

Class D: Dredgings

21.50 Class D permits use of any land for the spreading of dredged material by statutory undertakers in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings (i.e. those undertakers identified under Class B and Class C). There are no specific restrictions indicated for this Class.

ISSUES

- 21.51 None of the responding local authorities raised any concerns on Class D. This is consistent with the 1997 DETR research, which indicates that 95% of authorities had no areas of concern, although this identified a case of adverse impacts on amenity and built heritage from a port operator filling a listed dry dock with dredged aggregates. No concerns were raised by any other organisation and no cases of Article 4 Directions being applied.
- 21.52 The responding undertakers indicated that they use Class D to be able to deposit dredged material on land without the need to apply for planning permission. It would appear that the majority of marine dredgings are now deposited offshore rather than on land. The process is regulated by the Marine Consents and Environment Unit, an alliance between DEFRA's Marine Environment Branch and Department for Transport Ports Division, which must grant a licence to the statutory undertaker to carry out dredging of the sea bed, harbours or shipping channels and will only issue such a licence when it is satisfied that the dredgings will be disposed of in a proper manner and in an appropriate location.
- 21.53 A similar process takes place with the dredging of inland waterways, where the Environment Agency issues a licence and will only do so, once it is satisfied that the dredgings are to be deposited in an appropriate and safe location.

SCOPE FOR CHANGE

- 21.54 These permitted development rights support water transport operations and indirectly can be considered as contributing to economic competitiveness, although there is some scope for adverse impacts on the environment if dredgings were deposited in sensitive areas. However, there appears to be very limited conflict with policy aims and no significant impacts were identified by local authorities, users or interest groups. At the same time, these rights relate to the operation of essential infrastructure and appear to give rise to very few material planning issues. There also appear to be adequate controls against adverse impacts through the regulatory process and the EIA regulations.
- 21.55 On this basis, there is no obvious need to remove or reduce these rights or for other changes to Class D. **No changes are therefore recommended to this Class.**

Class E: Water or hydraulic power undertakings

- 21.56 Very similar development is permitted under Class E as for Part 16 (Class A) development by or on behalf of sewerage undertakers. In summary, it permits various works by statutory undertakers required for the supply of water or hydraulic power including:
- development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources, or for the conveyance of water treatment sludge, (but not construction of a new reservoir);
 - development in, on or under any watercourse and required in connection with the improvement or maintenance of that watercourse;

- the provision of a building, plant, machinery or apparatus in, on, over or under land for the purpose of survey or investigation;
- the maintenance, improvement or repair of works for measuring the flow in any watercourse or channel;
- the installation in a water distribution system of a booster station, valve house, meter or switching gear house (below 29 cubic metres in capacity); and
- any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building, subject to size (any increase below 1000 m² and 25% by volume) and height (15 metres) limitations and the design or external appearance of the building not being materially affected.

ISSUES

- 21.57 No planning authorities reported any specific problems arising from the operation or interpretation of Class E, or with defining who is a statutory undertaker under it. This is consistent with the 1997 DETR research, in which 84% of local authorities who gave a view considered the scope of Class E to be sufficiently defined.
- 21.58 The users of Class E, i.e. the water or hydraulic power undertakers, reported that they were generally content with its scope and operation, apart from the following concerns:
- One water undertaker was concerned that planning authorities seek to remove permitted development rights when granting planning permission for a larger development without any valid planning reason as, in their view, Class E provides sufficient control. This undertaker has successfully challenged local planning authorities on this point.
 - Class E(e) allows small water pumping stations below 29 m³, but there is no corresponding provision in Part 16, which relates to sewerage. This means that water/sewerage undertakers must apply for planning permission to erect a kiosk housing electrical equipment for a sewerage pumping station since it is regarded as a building and not permitted under Part 16.
 - Raised manholes above ground level on non-operational land are not permitted development and require planning permission; water undertakers consider they should be permitted development as they have minimal impact.
 - As with Part 16, delays caused by the lack of permitted development rights for contractors' compounds located some distance from the works.
- 21.59 As with several other Part 17 rights, the impacts of repair works affecting streetscape and areas of archaeological importance was a concern to some interest groups.
- 21.60 No examples were found of Class E permitted development rights being removed by an Article 4 Direction or by the requirement to carry out EIA.

SCOPE FOR CHANGE

- 21.61 These rights support the provision of essential services and infrastructure, often required urgently or in emergencies, are exercised by a regulated body and there appear to be adequate controls in place, through the various size limitations and environmental controls that apply, to avoid significant conflict with countryside protection aims. While these permitted development rights can give rise to material planning issues, no significant impacts were identified by local authorities, users or interest groups. On this basis, there is a strong argument for retaining these rights and no case has been made for major changes to Class E. There is, however, scope for some minor amendments to address specific concerns.
- 21.62 Raised manholes on operational land appear unlikely to have significant visual impact, but outside operational land have more potential to give rise to material planning issues if of excessive height. On farmland they are needed to avoid damage by agricultural vehicles or works. Consideration was given, therefore, to giving permitted development rights to raised manholes below a certain height limit above ground. While this could remove the need for a significant number of minor applications that, for the most part, would not appear to have significant visual impacts, it would be inconsistent with the approach to controlling works affecting streetscape and protection of sensitive landscape. It would also be difficult to permit such manholes only in rural areas and restrict them in urban streets, although it appears unlikely that the latter situation would arise. On balance, no change is recommended.
- 21.63 **Overall, no changes are recommended to this Part.** However, specific guidance should be included within the GPDO User Guidance document to elaborate on the advice in Circular 11/95, that permitted development rights should not be removed by conditions unless there are compelling reasons to do so which are not adequately addressed by existing controls and limitations within the GPDO.

Class F: Public gas transporters

- 21.64 A public gas supplier is permitted to carry out development required for the purposes of its undertaking, including (a) the laying underground of mains, pipes and other apparatus; (b) the installation of a gas distribution system and structures for housing associated apparatus; (c) the construction of any storage and protective area, boreholes or associated plant or machinery, (d) storage of pipes and other apparatus on land; (e) the erection of a building for protecting plant or machinery on operational land; and (f) any other development in, on, over or under operational land.
- 21.65 Restrictions include a 15 metre height limit for plant or machinery. A public gas transporter is also required to give not less than 8 weeks written notice to the local planning authority of its intention to lay a pipe-line for Class F(a) development. Prior approval of the details of the design and external appearance of development carried out under Class F(e) must be sought from the local planning authority. No specific restrictions apply in designated areas.
- 21.66 These rights are understood to be exercised frequently by the undertaker.

ISSUES

- 21.67 Only two local planning authorities indicated that Class F development gave rise to any problems, and these related to the quality of reinstatement after repair works to streets. No authorities reported any difficulties with interpretation of Class F. No cases were found of Article 4 Directions being used to restrict these rights.
- 21.68 In the 1997 DETR research, some 10% of authorities indicated some areas of concern, relating to Class F works causing tree damage, failure of undertakers to submit external designs and to the definition of operational land.
- 21.69 Transco, as the country's principal public gas transporter, reported that it has few, if any, problems in using, understanding or interpreting Class F.

SCOPE FOR CHANGE

- 21.70 These rights relate to the provision of essential services and infrastructure that are often required urgently or in emergencies, and are exercised by a regulated body. While there is potential for conflict with countryside protection aims, there appear to be adequate controls against adverse impacts through the size limitations and the EIA regulations and no significant impacts were identified by local authorities, users or interest groups. At the same time, no case was made for any widening of these rights.
- 21.71 On this basis, there is no obvious reason to reduce these rights or for other major changes to Class F. There are also no obvious areas, other than improved drafting, where alterations are required to respond to specific concerns. **No changes are proposed specifically for this Class**, other than the general changes, discussed in Chapter 39, of defining repairs to all services as development and making this permitted development subject to conditions on reinstatement, and making rights for utilities and street furniture conditional on no adverse impacts on streetscape etc.

Class G: Electricity undertakings

- 21.72 Under Class G, development is permitted for the generation, transmission or supply of electricity, including works in connection with an electric line (Class G(a)); the installation or replacement of any telecommunications line or any support for such a line connecting an electric line to any electrical plant or building (b); the sinking of boreholes and installation of associated plant and machinery (c); the extension or alteration of buildings (d); or the erection of a building for protecting plant and machinery on operational land (e); or any other development in, on, over or under its operational land (f).
- 21.73 Stronger restrictions apply than in other Classes of Part 17, since development is specifically not permitted in a National Park, an Area of Outstanding Natural Beauty or a Site of Special Scientific Interest, or where the height of any support exceeds 15 metres, or a telecommunications line would exceed 1,000 metres in length. The height of the original building must not be exceeded, the cubic content of the original building must not be exceeded by more than 25% (10% in Article 1(5) land) or if the floorspace of the original building would be exceeded by more than 1,000 sq m, (500 sq m in Article 1(5) land). Undertakers must also seek prior approval of

the design and external appearance of any such buildings from the local planning authority. Conditions require compliance with any planning permission relating to the existing electricity line for Class G(a) development, removal of any temporary line, plant or machinery in the case of Class G(a) or (c) development, and restoration '*as soon as reasonably practicable*' to its previous condition.

ISSUES

21.74 No local authorities reported any problems with understanding or using Class G, which is perhaps surprising, given its length and number of exclusions and conditions. However, two planning authorities (1% of those responding) reported that developments by electricity undertakers had caused damage to the streetscape, in terms of poor quality reinstatement works, and one National Park authority on impacts of overhead lines to remote dwellings.

21.75 The 1997 DETR research on statutory undertakers found that 24% of authorities expressed some concerns about Class G, specifically:

- visual impact of overhead lines in countryside areas;
- visual impact of a transforming station in a conservation area;
- visual and safety aspects of poorly sited sub-stations within housing estates;
- damage to trees from trenches; and
- impact of junction boxes on streetscape.

21.76 Responding electricity undertakers expressed general satisfaction with Class G and reported that, although it is long and would benefit from redrafting to make it easier to use, frequent use means that they are very familiar with it. They generally notify local planning authorities on all permitted development proposals in accordance with Circular 9/95 and consider re-siting, changing the appearance of the structure and landscaping to take account of local authorities' comments. All undertakers stressed that every exercise of their permitted development rights is necessary to their statutory duties and that they carry them out in a '*responsible manner*'. These rights are frequently used, with one regional undertaker using these rights for around 200 sub-stations annually.

21.77 Specific issues raised by electricity undertakers included:

- the need to increase the size limits of permitted structures to allow for primary sub-stations, which would help to speed up new electricity connections for major infrastructure projects; and
- increasing the 29 m³ volume limit for a chamber to house new apparatus (such as sub-stations) since undertakers are often required by developers to provide brick-built chambers of 60 m³ which require planning permission and lead to delays.

21.78 No undertakers reported any experience of Article 4 Directions or of the requirement for an EIA removing permitted development rights.

SCOPE FOR CHANGE

- 21.79 While these permitted development rights can give rise to material planning issues, they relate to provision of essential services and infrastructure often required urgently or in emergencies. These rights are exercised by a regulated body and there generally appear to be adequate controls against adverse impacts through the size limitations and the EIA regulations. No major conflicts with policy aims were identified and no significant impacts were identified by local authorities, users or interest groups.
- 21.80 On this basis, there is a strong argument for retaining these rights and no case has been made for major changes to Class G but consideration has been given to the need for amendments to address certain specific concerns raised by users:
- Class G would benefit from redrafting to improve its interpretation.
 - Size limits should be increased to take certain sub-stations out of planning control.
- 21.81 The suggestions by a number of electricity undertakers to relax Class G permitted development rights to allow larger buildings up to 60 m³, but still subject to the requirement for prior approval for design and external appearance could, in theory, speed up the planning process for electricity undertakers. However, it is questionable whether the prior approval process required would be any faster than the planning application process. In addition, buildings of more than 29 m³ are more likely to have significant planning impacts and it is considered appropriate that they remain within planning control.
- 21.82 **No changes are proposed that relate specifically to this Class.** However, the general changes discussed in Chapter 39 will apply, that involve defining repairs to all services as development and making this permitted development subject to conditions on reinstatement, as well as making rights for utilities and street furniture conditional on no adverse impacts on streetscape etc and assessing compliance against a Street Management Code.

Class H: Tramway or road transport undertakings

- 21.83 This Class permits wide-ranging development, including installations on operational or non-operational land for supplying current to public service vehicles, tracks and associated works, cables and apparatus for operating public service vehicles, signs, passenger shelters and barriers as well as any other development on the undertaking's operational land. The capacity of any structure related to supplying current to public service vehicles is limited to 17 m³.
- 21.84 Restrictions apply to any other development on operational land, except where the design or external appearance of a building would not be materially affected, the installation of any plant or machinery would exceed 15 metres in height or for replacement plant or machinery if exceeding the height of that existing, or the development is not wholly within a bus or tramway station.

21.85 Class H is generally used by bus and tram operators, passenger transport executives (in the former metropolitan counties), and by relevant transport authorities elsewhere.

Issues

21.86 In consultation responses, no local planning authority raised any particular problems with this part of the GPDO, either in terms of difficulty with interpretation or in terms of giving rise to adverse impacts. The 1997 DETR research indicated that 5% of local planning authorities had areas of concern with Class H, including contractors' compounds being located some distance from their operation and the construction of bus shelters by the County Council without prior consultation with the District Council.

21.87 A number of interest groups raised the issue of bus shelters being poorly sited on the highway, resulting in obstructions to safe pedestrian flow and contributing to the proliferation of street clutter.

21.88 In terms of tramway undertakings, Class H grants planning permission for specific types of development associated with the running of trams, i.e. posts, overhead wires etc and, more generally, development on operational land. Tram operators indicated that they generally use Part 11 (development under local or private acts or orders), as most tramways were granted planning permission by an Act of Parliament. A review of a number of these Acts shows that the most recent ones make specific reference to tramways' permitted development rights being provided by Part 11. Tram operators indicated, however, that they also make use of Part 17 Class H, as these make more specific reference to tramway development and therefore clarify to local planning authorities what types of development are permitted. Generally, responding tram operators considered that the system works well and that local authorities are able to exercise control through their highway functions and in most cases are partners in the development of a tram line. Operators of 'historic' tramways reported that they only use Class H.

21.89 In terms of road transport undertakings, Class H grants planning permission for bus shelters on non-operational land and development on operational land. Users of this part include bus companies, passenger transport executives (in the former metropolitan counties), highway authorities (in non-metropolitan counties), district councils and parish councils, who erect and maintain bus shelters. Those users reported few problems with this Part and considered that local authorities were able to exercise adequate control through their highway functions.

21.90 One of the passenger transport executives noted that new bus stops are generally provided in association with new development. In these cases, the siting of bus stops is agreed by both the local planning authority and the local highway authority as a condition to granting planning permission, which generally leads to well-sited bus shelters.

21.91 Another passenger transport executive reported that it is currently seeking to improve the design of its bus shelters to include new facilities, such as bus ticket vending machines, CCTV and 'real time' timetable information. Some local planning authorities accept that these improvements fall under Class H, but others require a planning application, particularly where the new facilities are not within the bus shelter itself. The latter approach would seem to be consistent with Class H (d) and allows the local planning authority an added degree of control over 'street clutter', which may encourage bus operators to install new facilities within the bus shelter itself.

SCOPE FOR CHANGE

- 21.92 These permitted development rights relate to provision of essential services and infrastructure and are exercised by a regulated body. They broadly support Government policy aims on public transport but have some potential for conflicts on aims for improving streetscape and design quality although consultation procedures with planning authorities provide a level of control. Despite this, no significant impacts were identified by local authorities, users or interest groups other than the general concern of streetscape impacts.
- 21.93 On this basis, there is no clear case for major changes to Class H. While use of prior approval procedures for bus shelters would provide an additional control in the interests of streetscape, on balance existing procedures appear to work reasonably well. **No alterations are proposed other than making all street furniture provision subject to no adverse impact on streetscape, to be assessed against a Street Management Code.** This approach is considered in more detail at paragraph 39.52. Users consulted considered that this would be acceptable as it would formalise good working arrangements.

Class I: Lighthouse undertakings

- 21.94 Class I permits development required for the functions of a general or local lighthouse authority under the Merchant Shipping Act 1894 and any other statutory provision made with respect to a local lighthouse authority, or in the exercise by a local lighthouse authority of rights, powers or duties acquired by usage prior to the 1894 Act. Specific exclusions are the erection of offices, or the reconstruction of offices where their design or external appearance would be materially affected.
- 21.95 Class I permitted development rights are used by the Trinity Lighthouse Service, which provides nearly 600 aids to navigation across the UK, including 72 lighthouses, 429 buoys, 48 radar beacons and 18 beacons.

ISSUES

- 21.96 No planning authorities reported any problems in the interpretation or understanding of Class I, and none indicated that any specific impacts or problems arise from its operation. Broadly similar results were found by the 1997 DETR research.
- 21.97 The Lighthouse Service considers that these rights are an important tool, allowing it to carry out its statutory duties efficiently and effectively. The Service approaches local planning authorities, as a matter of course, to discuss proposals in advance, and has identified few difficulties, other than seeking to persuade local authorities that developments on land adjacent to but not necessarily part of the lighthouse itself also benefit from permitted development rights. Many lighthouses are also listed buildings and although most developments fall within permitted development, those affecting listed buildings require listed building consent, giving local planning authorities additional control over development at some sensitive locations.

SCOPE FOR CHANGE

- 21.98 These permitted development rights relate to provision of essential services and infrastructure and broadly support aims on sea transport and safety. Although there could be some potential for adverse impacts in sensitive coastal areas, no significant planning issues were identified by local authorities, users or interest groups. **On this basis, there is no reason for change to this part of the GPDO.**

Class J: Universal service providers

- 21.99 Class J permits development required for the purposes of Universal Service Providers consisting of the installation of posting boxes or self-service machines, and any other development carried out in, over or under the operational land of the undertaking. These rights formerly applied only to the Post Office but were extended to other postal providers following Government plans for deregulation of these services.
- 21.100 Exclusions to this Part include where development includes the erection of a building, where design or external appearance of buildings would be materially affected, or where the installation or replacement of any plant or machinery would exceed 15 metres in height or the height of any existing plant or machinery, whichever is the greater.
- 21.101 In summary, postal service providers benefit from rights to install posting boxes or self-service machines on any land, and there is a broader permission for other development on operational land only. These permitted development rights are currently used frequently by Consignia plc (trading as Royal Mail) to install posting boxes and less frequently to install self-service stamp machines. Consignia reported that it also uses Part 17 Class J to carry out development on operational land, but on a less regular basis.

ISSUES

- 21.102 No planning authorities reported any difficulties in the interpretation of Class J, and none identified any problems or adverse impacts with the operation of these permitted development rights. However, two planning authorities considered that the scope of these rights should be extended to include '*postal pouching boxes*'. These are used for the temporary storage of mail during a delivery and are either affixed to a posting box or are free standing. In the 1997 DETR research, 12% of authorities had some concerns about Class J, all related to pouch boxes.
- 21.103 Consignia reported no current significant problems or difficulties in understanding or using the GPDO, but stated that in the past there had been an inconsistent approach by planning authorities to the question of whether '*postal pouching boxes*' are permitted development or not. In 1989, however, the Secretary of State ruled on appeal that the installation of a postal pouching box is development requiring planning permission.²⁰

²⁰ The Use of Permitted Development Rights by Statutory Undertakers, DETR, July 1997.

- 21.104 As stated above, two planning authorities considered that postal pouching boxes should be included within the scope of permitted development, as they cause little or no visual impact on the streetscape and are subject to control under the 1991 New Roads and Street Works Act. In contrast, some interest groups, including English Heritage, considered that postal pouching boxes should remain within planning control as they can have an adverse visual impact on the streetscape, particularly in sensitive locations. In the Scottish GPDO, postal pouches outside conservation areas have been permitted development since 1992.
- 21.105 With regard to post boxes, Consignia noted that the traditional design of posting boxes makes them usually acceptable and often welcomed in the streetscape and that the 1991 New Roads and Street Works Act provides adequate control over their siting. However, a recently published joint policy statement by Royal Mail, English Heritage and Consignia indicates that where it is proposed to relocate a post box, prior written notification should always be made to the conservation officer or the relevant person in the highways department, to identify an appropriate new site.²¹ This should improve the siting and location of new post boxes. This policy statement also specifically indicates that no postal pouches will be attached to post boxes in the future and where this has occurred in the past, they will be progressively removed.

SCOPE FOR CHANGE

- 21.106 These permitted development rights relate to provision of essential services and infrastructure and are exercised by a regulated body. No major conflicts with policy aims were identified and no significant impacts were identified by local authorities, users or interest groups. These rights also reduce the need for a sizeable number of repetitive and generally uncontentious planning applications.
- 21.107 On this basis, there is a strong argument for retaining these rights and no case has been made for major changes to Class J. While informal controls apply, to reinforce these and for consistency with other street furniture, permitted development rights for post boxes should be conditional on siting so as to minimise any effects on pedestrian flow and visual impact.
- 21.108 With regard to free-standing postal pouches, the absence of problems in the Scottish system suggests these could be specifically included under Class J with the compromise to design and heritage aims being to restrict them within conservation areas. While the current system does not appear to be causing widespread problems, this extension should be considered subject to a condition, as for other street furniture, that these pouches are sited so as to minimise any effects on pedestrian flow and visual impact.
- 21.109 The recommended change to this Class is, therefore:

- **include freestanding postal pouch boxes within Class J as permitted development outside conservation areas and subject to no adverse effects on streetscape and pedestrian flow, which could be assessed against guidelines in a Street Management Code.**

²¹ Royal Mail Letter Boxes, Joint Policy Statement by Royal Mail and English Heritage, Oct 2002.

Table 17: Assessment of recommendations for change to Part 17 of the GPDO

Proposed changes to Part 17	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights: Development by statutory undertakers.	<p>√√√ -Supports economic development: by allowing essential minor works to infrastructure, i.e. electricity, gas, water, ports, railways, postal service etc.</p> <p>√√ Supports public transport development</p> <p>XX Significant potential for adverse impact on streetscape/landscape from cumulative impact of large numbers of small works, poorly sited and poorly maintained street furniture and poor reinstatement works, leading to a poor quality environment.</p> <p>X Limited scope for public involvement.</p>	<p>√√√ removes 10,000s of minor works from planning system, the majority of which are uncontentious and raise no material planning issues.</p>	<p>√√ Provides certainty to statutory undertakers who need to carry out essential works, often at short notice.</p>	<p>XX Significant potential for adverse cumulative impact on streetscape and landscape from large numbers of small works, poorly sited and poorly maintained street furniture and poor reinstatement works, leading to a poor quality environment.</p>	<p>Part 17 allows minor uncontentious development to be carried out by statutory undertakers, but there is potential for adverse impacts on the streetscape/landscape and on residential amenity, particularly from the cumulative effect of numerous minor works and street furniture. Current control by the highway authority appears inadequate in securing a high quality environment.</p>

Table 17: continued

Proposed changes to Part 1	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
1. Widen definition of railway undertaker to include lessees.	<p>✓✓ Supports public transport development and could encourage greater private investment in the railway.</p>	<p>– minor impact, possibly fewer applications if Network Rail and/or TOC is not directly involved.</p>	<p>✓✓ Provides greater certainty to the railway industry</p> <p>X unclear over who would be in overall control of railway development, although Network Rail should retain control as landowner.</p>	<p>– no impact, as type of development would be same, regardless of who carries it out.</p>	<p>Widening the definition of railway undertakers to include lessees would provide greater certainty to the wider rail industry and could encourage greater private investment in the railway.</p> <p>Change recommended.</p>
2. Railway telecom masts in Article 1(5) land to require planning permission when above 15m and prior approval where below 15m.	<p>✓ Greater protection for sensitive landscape areas.</p>	<p>X increase in number of applications and prior approvals.</p> <p>✓ LPAs would not need to seek Article 4 Directions to remove railway PDRs.</p>	<p>X – increased regulatory burden on rail industry, but would clarify height thresholds for masts (in line with other telecommunications masts).</p>	<p>✓✓ greater protection for sensitive landscapes and residential amenity.</p>	<p>Railway telecom masts needed for rail safety, but high masts could cause significant visual impact in sensitive areas. Change would increase burden on local authorities and rail industry, but greater opportunity to protect sensitive environments.</p> <p>On balance, change recommended.</p>

Table 17: continued

Proposed changes to Part 17	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Clarify that railway vehicle washing and maintenance sheds are operational railway development.	<p>✓ Supports public transport development aims and would facilitate new rolling stock.</p>	<p>– minor impact, possibly small reduction in number of applications.</p>	<p>✓ Provides greater certainty to the railway industry and be consistent with the approach in Scotland but relatively few planning applications avoided.</p>	<p>XX significant potential for impact on residential amenity.</p>	<p>New and/or extended depots will be needed to accommodate new, longer rolling stock. Small benefits to users likely to be outweighed by potential adverse impact on amenity and to be consistent with rights for ports.</p> <p>No change recommended but could be considered further.</p>
4. include security fencing and pole-mounted CCTV cameras as Class B (ports) permitted development, where required in connection with operational activity and subject to appropriate height restriction.	<p>✓ Increased safety and security at UK ports.</p>	<p>✓ Fewer planning applications for security related developments.</p>	<p>✓ Increased certainty for ports and harbours.</p>	<p>X potential for impact on residential and visual amenity, but could be overcome with an appropriate height restriction.</p>	<p>Urgent requirement for enhanced security measures can be delayed by planning application process. Including security measures 'reasonably required in connection with port operations', subject to height restrictions, as permitted development would assist port authorities in meeting high security standards.</p> <p>Change recommended.</p>

Table 17: continued					
Proposed changes to Part 17	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
5. Clarify that industrial processes on operational port land is not PD.	√ Increased scope for protecting amenity.	√ Would clarify situation for LPAs.	√ Would clarify situation for port authorities.	√ Increased scope for protecting amenity.	This would aid interpretation for users, LPAs and third parties. Change recommended.
6. Raised manholes should be PD on non operational land below a certain height.	X potential for impact on landscape.	√ Fewer planning applications, the majority of which would be uncontentious.	√ Increased certainty for water undertakers and need for fewer applications.	X some potential for impact on landscape but height limit would minimise this. X conflict with streetscape aims.	Allowing raised manholes on non-operational land could cause impact on visual amenity. Change not recommended.
7. Include freestanding postal pouch boxes within Class J and be permitted development outside Article 1(5) land.	– potential for impact on heritage and streetscape aims if not properly controlled.	√ potential significant reduction in number of planning applications, the majority of which would be uncontentious.	√ significantly reduced number of applications for postal service providers and would bring into line with Scotland, where postal pouches are pd outside Conservation Areas. √ Reduced regulatory burden on postal service providers.	X potential for impact on residential and visual amenity, but could be overcome with a restriction in Article 1(5) land, allowing only freestanding boxes and compliance with Street Management Code.	Potential for significant reduction in number of uncontentious planning applications, but retain planning control in sensitive areas. Change recommended.
8. Works affecting streetscape to accord with Street Management Code.	√√/ greater protection for landscape /townscape.	X to be effective, would require closer co-operation between highway and planning authorities and better enforcement – resources issue.	X perceived increase in regulatory burden, but best practice highway authorities should not be impacted.	√√/ greater protection for landscape /townscape.	Significant benefits for the environment through better reinstatement, but would require change in primary legislation. Change recommended.

√ indicates positive impact from √ (low) to √√/ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 22

Part 18: Aviation development

- 22.1 This Part relates to various operational development on and around certain airports, the permitted development rights for which can be summarised as follows:

Class A. Development at an airport: permits development by an airport operator or its agent on operational land, in connection with the provision of services and facilities at a 'relevant airport'. This excludes construction or extension of a runway, extensions to a terminal exceeding floorspace limits and non-operational development, as well as for alteration or reconstruction that would materially affect the design or external appearance. If development is urgently required for the 'efficient running' of the airport, or for works not exceeding 4 metres in height and 200 cubic metres, then the airport operator does not have to consult the local planning authority before carrying out the development.

Class B. Air traffic services development at an airport: The provision of development for air traffic services is permitted on operational land by a relevant airport operator or its agent.

Class C. Air traffic Services development near an airport: Such development is permitted on operational land up to 8 Km. beyond the perimeter of a relevant airport, for the same functions as Class B.

Class D permits works by an air traffic services licence holder or its agents within an airport, and Class E allows for development by an air traffic services licence holder on operational land. Classes D and E almost duplicate Classes B and C but are usable by an air traffic services licence holder rather than the airport operator and there is no distance limitation in Class E.

The following three classes – Class F Development by an air traffic services licence holder in an emergency; Class G Development by an air traffic services licence holder involving moveable structures in connection with air traffic control services; and Class H Development by the Civil Aviation Authority for surveys etc. – all relate to temporary apparatus and structures, with removal and restoration of land required after the expiry of a six month period.

Class I permits the use of buildings within an airport perimeter, where managed by a relevant airport operator, for 'purposes connected' with air transport services or other flying activities.

No special restrictions apply in designated areas such as Article 1(5) or 1(6) land while Article 4 Directions do not apply to development required in an emergency and to operational equipment or works other than buildings allowed by Class A.

- 22.2 Classes B to G were revised in 2001 by the Transport Act 2000 (Consequential Amendments) Order 2001. These changes mainly replaced references to the CAA with the more general term 'air traffic services licence holder'.
- 22.2 There are, therefore, two broad groups of permitted development rights: one group is available to the CAA, who are responsible for some smaller airports and for certain air traffic control and navigation facilities, both within and outside the airport boundary. The other is available to relevant airport operators, and permits airport operational infrastructure, fuel farms, navigational equipment and buildings but not new runways or passenger terminals. The rationale for these rights is to enable the timely provision of airport facilities without delays since these facilities are often required to meet safety and security directives at short notice. Many such facilities are minor and inconspicuous although large hangars and other operational buildings can be erected under Part 18 rights.
- 22.3 These rights were first introduced at a time when most airports were controlled by local authorities or other public sector organisations. It should be noted that only certain airports, currently about 30 in number in England, enjoy permitted development rights under Class A. These are those meeting the criteria for being a '*relevant airport*' in terms of the 1986 Airports Act, which include a requirement to levy landing fees above a certain annual limit. This means that a number of very small airfields and airports will not have Part 18 permitted development rights.

ISSUES

- 22.5 Only 3% of all responding local authorities (17% of authorities with a relevant airport within their boundary) raised any concerns on Part 18. A similar proportion indicated some difficulties in interpretation. The main problems raised were that:
- Part 18 permitted development rights are too loosely defined in terms of the lack of controls on scale and height of development;
 - the perceived lack of power for local authorities to enforce any variations from permitted development, with too much activity reliant on subjective assessment of the impact on amenity;
 - inadequate controls on new development once land had become part of the airport operational area for other purposes; e.g. commercial car hire on land added to the operational area to provide airport parking;
 - the conflict between airport development and Green Belt policies since many airports lie within such areas; and
 - one authority proposed removal of Class I rights completely while another considered the consultation process for Class A development did not enable proper control, since there is no refusal procedure.
- 22.6 Responses were received by or on behalf of 9 airport operators, of which 6 considered permitted development rights critical to their operations, two as important and one as fairly important. These rights were typically used for facilities such as fire buildings, control towers, car parks, security fencing and in a limited number of cases to erect

large hangars to be occupied by third parties in connection with air transport activities. Such rights can be exercised perhaps 6-7 times annually by a small airport but several hundred times pa at a large airport.

22.7 The great majority of responding operators indicated some difficulties in interpreting Part 18. Approximately half of the airport operators felt Part 18 permitted development rights were too restrictive, while 13% of responding local authorities who gave a view considered them too loosely defined. All operators identified some problems, which included:

- disputes with local authorities as to whether permitted development rights apply at their airport and the different interpretations of specific Part 18 rights by different authorities;
- disputes over the definition of the airport operational area, particularly when expansion of this area is sought;
- the limited (15% of floorspace) allowances for terminal expansion based on the 1988 situation; in many cases, this allowance has been used up and further allowances were sought, perhaps a certain floorspace limit every 10 years;
- disputes over whether piers and satellites are restricted by the floorspace limit for extending terminals in Class A on the basis that they are attached to a terminal building; and
- delays caused by the absence of any time limits on consultation procedures with local authorities and the need for a standard national consultation procedure.

22.8 One aviation interest group considered that Part 18 rights should be limited only to operational facilities with no external environmental impacts and that better interpretation of piers/satellites was required as these can be used to enlarge airport capacity. Other bodies sought prior approval by and formal notification to the CAA/airport for all permitted development within the safeguarding area.

22.9 In addition, the recent Circular 1/02 on Public Safety Zones around airports makes clear that any development in these Zones that enables more people to live, work or assemble there should be restricted, as should permitted development rights that facilitate such activity.

22.10 Only one local authority had experience of the EIA regulations being used by a local authority to seek to restrict permitted development rights at an airport (for a large new hangar) and in this case the Secretary of State ruled that no EIA was required. The same development is also the only identified instance of an Article 4 Direction being used to successfully restrict aviation development.

SCOPE FOR CHANGE

22.11 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 18 and discussed below.

- 22.12 These rights generally support the Government policy aim of encouraging airport growth to meet demand while minimising their environmental effects. There is also some indirect support for economic competitiveness aims. At the same time, many airports are located in Green Belts or other areas of sensitive landscape and major development in such areas has potential for adverse impacts, while there is also scope for conflict with aims on noise, air quality and sustainable transport. The desirable outcome would be for airports to be able to bring forward essential operational development without delays but with adequate controls in place to prevent material planning impacts.
- 22.13 Many of the permitted development rights available at airports can be argued as justified by the need to meet quickly and efficiently operational requirements and safety standards. Indeed, failure to comply quickly with certain CAA requirements can lead to the loss of the airport's licence and closure of the airport. This applies particularly to air traffic and navigational equipment and there is no obvious justification for change to these rights.
- 22.14 Based on consultation responses, the main issues and concerns with Part 18 where careful consideration is required are:
- the rights enabling large operational buildings without specific size controls to be erected in sensitive areas and occupied by parties other than the airport operator;
 - the safety issues relating to permitted development rights in both airport safeguarding zones up to 15 Km. around airports and the Public Safety Zones at the end of runways;
 - the impact of Class A development on Green Belts; and
 - the adequacy of the consultation procedures and interpretation problems.

Large Airport Buildings

- 22.15 Allowing, under permitted development rights, very large airport buildings, such as hangars or cargo centres which can have potentially significant visual impacts, is considered unjustifiable by several local authorities, particularly when these buildings are then occupied by other parties. As no size limits apply at present, the only controls available to local authorities are where an EIA is required or by issuing an Article 4 Direction, both of which are somewhat cumbersome tools with uncertain results. Some authorities have suggested deletion of Class I generally, to restrict the use of Class A buildings within designated areas such as Green Belt, or limit any building under Part 18 (e.g. to say 200 m³) within such areas.
- 22.16 In considering this issue, it has to be noted that while airport buildings can form the largest structures normally erected under permitted development rights, their size is dictated by their function, e.g. tall control towers, or hangars to allow maintenance and storage of large aircraft. Hangars are analogous to large sheds for storage of trains, which are permitted under Part 17, and airport operators are also statutory undertakers with a need to provide and maintain essential transport infrastructure. A hangar is an essential operational building for an airport since, without such covered storage, aircraft maintenance cannot take place and the airport cannot meet safety and emergency procedures and would be unable to operate effectively.

- 22.17 Airports tend to be politically sensitive and for historical reasons are often located in open areas, including Green Belts. This can mean that any planning application for airport operational development can often give rise to many objections and face lengthy delays through the planning process. Since development allowed under Part 18 has to be by definition for essential operational purposes, lengthy delays may be unacceptable for the operation of an airport.
- 22.18 The issue of large airport buildings does not appear to be a widespread problem, with very few planning authorities raising it, and the existence of only some 27 relevant operators across England means that there are a limited number of potential cases. It could be argued that airports, by their nature, are often sites where very large structures, such as terminal buildings, already exist and have often been granted planning permission, and that new hangars would not have the same adverse impact as in other, less developed locations. There is also a series of controls in place to prevent abuse. In addition, Part 18 requires such development to be only for essential operational purposes and, given the high cost of such large structures, airport operators will generally not bring forward such developments unless they are needed. Because of safeguarding and operational factors, operators argue that there are also only limited areas within an airport operational area where such development can take place, preventing proliferation of large buildings.
- 22.19 The EIA regulations also impose a measure of control, if the individual or cumulative effects of such buildings were to cause significant impacts, with the potential for scrutiny by the Secretary of State. The Article 4 Direction procedure provides a further fall-back control, although it is recognised that this is a cumbersome and time consuming procedure. The risk of major compensation liability to the local authority from this route can also be a deterrent, although very few actual cases of such compensation being sought have been identified.
- 22.20 In terms of policy aims, many airports are within open areas and restricting their ability to erect anything more than very small operational buildings can be seen as constraining their growth and that of the air transport industry.
- 22.21 On balance, while recognising the concerns arising from this form of development, this type of development provides for essential public transport infrastructure and the limitations and other controls which apply to it are considered appropriate. No change, including to size limitations, is therefore proposed to Part 18 in this respect although improved consultation procedures with planning authorities may go some way to addressing concerns.
- 22.22 With so many airport functions now undertaken by contractors, it would be unreasonable, and harmful to the operation and safety of an airport, to restrict the provisions under Class I for other parties to occupy buildings managed by the airport operator.

Green Belts

- 22.23 Any proposals to impose additional restrictions on permitted development rights generally within Green Belt land must be considered very carefully in relation to airports. Since many airports are located in Green Belts, this could potentially remove the ability to carry out urgent, essential works required for safety reasons. Some smaller airports believe this would make it impossible for them to operate since even minor planning applications attract local objection and suffer lengthy delays, sometimes politically motivated.

- 22.24 As indicated above, since airports tend to already have large buildings on them, carefully sited new development may not increase any effects on the openness of the Green Belt. Indeed, from investigation with a number of local authorities containing airports in Green Belt, it was very difficult to find specific examples of Part 18 development being considered to cause significant harm to the Green Belt. It can also be argued that airport runways and associated areas preserve the openness of Green Belts and that safety and operational factors restrict built development in these locations.
- 22.25 In the one case found of an Article 4 Direction being applied to restrict a new hangar in Green Belt, this was subsequently granted permission by the Secretary of State on appeal after refusal by the local authority (see Case Study 12, Annexe 7). In most cases, consultation procedures with local authorities appeared reasonably effective in securing mitigation measures to minimise harm e.g. re-siting or landscape screening. In the absence of clear evidence of widespread harm, it is not considered appropriate to apply any specific restrictions on Part 18 development within Green Belt land.

Case Study 12:

Bristol Airport has carried out various permitted development works in the Green Belt, such as surface car parks and a general aviation hangar 9m high. All permitted development works are subject to a well established, informal consultation procedure with the local planning authority. No concerns were raised by any parties during consultation on these developments with regard to impact on the Green Belt, reflecting the context of existing airport buildings and the car parking being located in a shallow valley.

Consultation Procedures

- 22.26 With regard to consultation procedures, airport operators are required only to consult with planning authorities on buildings above certain size limits but with no specific procedure or time limit, and no guidance on how this consultation process should operate. While this procedure can result in operators amending or mitigating proposals in various ways, some operators complained of extensive delays to obtain a response. The absence of a time limit or formal procedure is inconsistent with other Parts of the GPDO.
- 22.27 One approach considered was to extend prior approval procedures to Part 18 development, with all details submitted at the outset and differential time limits related to the scale of development to give authorities reasonable time to consider proposals. One operator proposed that giving 28 days to respond on developments of under 1 ha. in site area and 42 days for those over this size limit. The 56 day revised prior approval procedure suggested in Chapter 39 may be seen as too long where airport infrastructure has to be installed urgently for safety reasons and it may be that a 28 day limit could apply in such cases where the scale of the facility is small.
- 22.28 However, other consultees considered that no prior approval procedure should apply to Part 18 since the siting of buildings was already constrained by operational and safety factors, and offering wider public consultation invariably leads to extensive and unacceptable delays. Airports appear to be a special case where a 56 day prior approval procedure may be inappropriate for various operational and regulatory

reasons. Some airports have agreed effective, formal consultation procedures with local authorities on when and how consultation should operate and the timescale for responding, typically 28 days; wider use of this approach, including an agreed timescale could be an acceptable compromise. On balance, there is a case to specify a time limit for obtaining responses to consultation in Part 18, which could be set at 28 or 56 days, depending on the scale/impact of the development proposed.

Interpretation Problems

- 22.29 To reduce interpretation problems and disputes relating to terms in Part 18, there is a need for clearer definitions of various terms including *'operational area'*, *'piers'*, *'satellites'* and *'terminal'* as well as *'relevant airport'* and *'relevant operator'*. Piers and satellites are treated inconsistently by different authorities with some considering them restricted by the floorspace limits on terminals. However, it is understood that piers and satellites do not affect airport passenger capacity, having no check-in, security or immigration facilities and so not subject to the expansion constraints of the terminal itself. While the interpretation in Part 18 that these elements are not to be counted as terminal floorspace appears clear, further clarification in a User Guidance document would be helpful to avoid disputes. For the same reason, it would also be helpful to provide the current list of relevant airports in the GPDO User Guidance document.
- 22.30 Part 18 contains a number of Classes of development with similar functions but available to different users. In the interests of simplifying the understanding of this Part, consideration could be given to merging certain Classes (e.g. B and D and C and E) if this can be done without any loss of controls. Consideration as also given to separating within different Parts, the rights given to airport operators from those for the CAA, as in the Northern Ireland GDO, but any additional ease of reference from this was not justified by creating a separate Part and would conflict with the aim of relating rights to types of development rather than users where possible.
- 22.31 An assessment of the benefits and deficiencies of the main changes considered for this Part, in terms of policy aims and effects on key stakeholders, is provided in Table 18. Based on this assessment and the above discussion, the following limited changes are recommended, which are not anticipated to produce any change in the number of planning applications and should provide greater clarity and certainty for users:
- **set time limits of 28 or 56 days for consultation on Class A operational developments; and**
 - **specify relevant airports in the user guidance document and clarify that piers and satellites are not subject to the floorspace extension limit on passenger terminals.**

Table 18: Assessment of recommendations for change to Part 18 of the GPDO

Proposed changes to Part 18: Aviation development	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√√ support policy aims on airport capacity growth and economic competitiveness.</p> <p>X potential for adverse impacts on open areas and air quality aims with only limited controls on increasing passenger terminal capacity.</p>	<p>√ small reduction in numbers of planning applications for often minor but essential works, and only for 35 LPAs.</p>	<p>√√√ reduces no. of planning applications and associated delays for small no. of essential, often urgent works which may otherwise be very controversial.</p>	<p>X potential for adverse impacts on adjoining amenity and sensitive areas with little control through size thresholds but relatively few cases of harm reported.</p>	<p>Important benefits to users and policy aims for often essential urgent works avoiding delays of planning control outweigh relatively few cases of adverse effects and limited controls in place.</p>
1. Impose size limits on operational buildings.	<p>X conflict with policy aims on airport capacity growth and economic competitiveness.</p> <p>√ supports aims to protect countryside and sensitive areas.</p>	<p>√ small increase in no. of planning applications for limited no. of LPAs.</p>	<p>XX small increase in no. of planning applications but potential for lengthy delays for essential and often urgent works.</p>	<p>√ increased control over adverse impacts on open/sensitive areas but few cases of harm found and controls exist through Art 4 and EIA regulations.</p>	<p>Important drawbacks to users and policy aims outweigh relatively few cases of adverse effects since other controls are in place.</p> <p>No change recommended.</p>
2. Set time limit for consultation to 28/56 days.	<p>√√ support policy aims to speed up planning decisions and assist airport capacity growth.</p> <p>√ consistent with other Parts of GPDO.</p>	<p>X reduces time for LPA response.</p>	<p>√ increased certainty and avoidance of delays for users but informal agreements effectively used in some areas.</p>	<p>X reduces time for for affected parties to object to LPA .</p>	<p>Benefits of delay avoidance for users and consistency outweigh limited drawbacks although informal consultation arrangements can work effectively.</p> <p>Change recommended.</p>

Table 18: *continued*

Proposed changes to Part 18: Aviation development	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Exclude Aviation Buildings in Green Belt.	√ supports aims to protect countryside and sensitive areas.	√ small increase in no. of planning applications for limited no. of LPAs.	XXX small increase in no. of planning applications but potential for lengthy delays for essential and often urgent works.	√ increased control over adverse impacts on Green Belt but few cases of harm found and controls exist through Art 4 and EIA regulations.	Important drawbacks to users outweigh relatively few cases of adverse effects since other controls are in place and very few cases of harm found.
					No change recommended.

√ indicates positive impact from √ (low) to √√√ (high)

X indicates negative impact from X (low) to XXX (high)

pd = permitted development

– indicates neutral impact

No change recommended.

CHAPTER 23

Part 19: Development ancillary to mining operations

- 23.1 Class A permits operations on land used as a mine for the erection, extension, rearrangement, replacement, repair or other alterations of any plant or machinery, buildings, private ways, railways or sidings or sewers, pipes, cables or other similar apparatus. Development is not permitted, however, if certain criteria are not fulfilled in relation to an underground mine, the principal purpose of the development, the external appearance of the mine being materially affected, the height of any building (15 m limit), plant or machinery in or out of an excavation and the floorspace (1,000 m²) or cubic content of a new or replacement building (25% increase). Development is also conditional on removal of all buildings, plant and machinery and land restoration within a 2 year period of activities ceasing, or any longer period agreed.
- 23.2 Class B permits, subject to the prior approval of the mineral planning authority, operations relating to plant and machinery, buildings or structures or erections, on land used as a mine or on ancillary mining land. Development is not, however, permitted if it relates to an underground mine in specified circumstances or if its principal purpose is not in connection with the mine. Prior approval should only be refused, or granted subject to conditions, if the development would injure the amenity of the neighbourhood and it could be sited elsewhere. Again, removal and restoration following cessation of use are required.
- 23.3 Class C permits, again with the prior approval of the mineral planning authority, development required for the maintenance and safety of a mine or disused mine. Prior approval is not required if external appearance would not be materially affected or if height, volume and floorspace limits are not exceeded. Other than for the same reasons as Class B, prior approval should not be refused, or granted subject to conditions.

ISSUES

- 23.4 Only 6% of the responding local authorities indicated that Part 19 rights caused them problems or adverse effects while the same proportion indicated some difficulties in interpreting this Part. Some 23% of responding local authorities expressed a view on whether these rights are too restrictive or not. Of those, 65% considered them about right, 35% considered them too loosely defined and none as too restrictive. Few specific concerns were identified:
- Difficulties in agreeing whether external appearance of the mine is materially affected under Class C.

- The need to clarify the extent to which processing of material not mined at the site is permitted; currently this allows both concrete batching plants and asphalt coating plants although the latter can use little locally mined materials and tends to give rise to more adverse impacts, such as night time noise and heavy vehicle traffic.
- The lack of an effective size limit on this development can give rise to adverse impacts.
- Although notionally temporary, plant may remain on hard rock quarries for many years with severe impacts on sensitive landscape.
- The prior approval procedures limit the extent to which authorities can control unacceptable development, particularly if no suitable alternative site is possible.
- Part 19 rights are generally too loose and necessitate mineral authorities removing most such rights by conditions on planning permissions for the mine.

23.5 Responses from mineral operators using this Part indicated that these rights were regularly used for various operational structures and safety equipment at mines, erection of temporary buildings as well as works associated with mine closure and remedial works to spoil tips. The rights were considered critical to their operations and defined about right. The few concerns raised were:

- planning authorities withdrawing these permitted development rights by conditions on new mining permissions or prior approvals; in one case, permitted development for any structures above 4 metres high was restricted resulting in a large number of applications being required for only marginally higher plant needed to recover methane and achieve environmental benefits;
- the lack of any specified time limit on prior approval under Part 19 Class B does not encourage planning authorities to respond quickly; and
- the need to ensure that mine closure works are covered by permitted development rights.

23.6 No cases were found of Article 4 Directions being used to restrict Part 19 rights.

SCOPE FOR CHANGE

23.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 19 and discussed below.

23.8 Part 19 rights can be argued as supporting Government policy aims on energy and mineral production by facilitating necessary ancillary development. Adverse environmental effects are controlled by the limitation of these works to an established mining area, the various size limitations applying, the prior approval requirement and the EIA regulations.

- 23.9 It was difficult to find many specific cases of actual harm caused by Part 19 permitted development rights, largely because most mineral planning authorities appear to routinely remove such rights by condition on new planning permissions. While guidance in MPG2 supports this approach in sensitive areas such as National Parks, this approach appears to be used in other areas also.
- 23.10 However, there appears to be a general view by mineral authorities that removing Part 19 permitted development rights by planning conditions is essential to avoid the problems that can arise, such as asphalt coating plants and concrete plants. Although no major or widespread adverse effects have been identified by planning authorities, users or interest groups, this may well be because the potential problems have largely been avoided by this approach.

Case Study 8:

Although a planning permission was granted for an asphalt coating plant at Barton, near Darlington, the operators claimed it relied on Part 19 rights, which impose fewer controls. Although not in a sensitive landscape area, there are noise and traffic concerns for local villages but impacts are difficult to control under Environmental Health Legislation since proving statutory nuisance can be difficult. The mineral authority considers only allowing such plants under full planning controls with conditions to control operational hours would avoid such problems.

- 23.11 This suggests the need for changes to Part 19 to avoid the need for mineral authorities to remove rights, an approach which does not appear to accord with Government guidance. This could be done by providing interpretation of the proportion of materials that need to be sourced from a mine to allow processing under Part 19, perhaps setting a limit of at least 50%. However, this may be difficult to monitor with proportions varying over time and a more effective approach would be to remove permitted development rights in Part 19 that allow mineral processing plants, particularly asphalt coating plants, on the basis of the material planning issues they give rise to. This could be done by identifying these plants as a specific exclusion in Part 19 and clarifying that they require specific planning permission. For operators, this would effectively only formalise a situation which already exists, with coating plants etc needing full planning permission in most cases.
- 23.12 To respond to other issues raised by users, the following changes should also be considered:
- a. establish a 56 day (or shorter) time limit for prior approval to give greater certainty to users and for consistency with other Parts;
 - b. provide better guidance on interpreting terms such as '*materially affected*' in relation to the external appearance of the mine and on the operation of prior approval procedures;
 - c. although this issue may be largely addressed by the proposed change in paragraph 23.11, clarify in the GPDO User Guidance document the situations in which mineral authorities should consider withdrawing permitted development rights by conditions, taking account of MPG2 and Circular 11/95.

23.13 Based on the balance of impacts discussed above and in Table 19, the following changes are recommended. These changes should not result in any significant increase in applications for mineral authorities since most have removed such rights by conditions and the changes will apply only to relatively few, older mineral permissions:

- **Specifically exclude mineral processing plants from permitted development rights in Part 19.**
- **Set a 56 day (or shorter) time limit for prior approval.**

Table 19: Assessment of recommendations for change to Part 19 of the GPDO					
Proposed changes to Part 19: Development ancillary to mining operations	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to ensure supply of minerals by facilitating ancillary plant.</p> <p>XX potential for adverse impacts of processing plants to conflict with protection of countryside and residential amenity.</p>	<p>– bring small reduction in numbers of planning applications but lead to pd rights for mining being generally removed by planning conditions.</p>	<p>– could help avoid delays/costs of planning applications for ancillary works but rights generally removed by condition so applications required anyway.</p>	<p>XXX potential for significant adverse impacts on residential amenity and countryside areas.</p>	<p>Potential for adverse effects of processing plants outweighs benefits to other sectors and leads to local authority actions in conflict with Government guidance.</p>
1. Remove Part 19 rights for mineral processing plants.	<p>√ Would still support mineral policy aims for many types of ancillary development</p>	<p>√ No increase in numbers of planning applications as pd rights commonly removed for processing plants but would reduce need to remove rights by condition.</p>	<p>X Perception of increased regulatory burden.</p> <p>– No significant effect as pd rights now routinely removed by condition. Could allow less restrictive approach to other Part 19 development.</p>	<p>√/ better protection of countryside, residential amenity in relation to older mine sites.</p>	<p>Significant benefits to users outweighs minor impact on LPAs. Change recommended.</p>
2. Set 56 day period for prior approval.	<p>– none</p>	<p>X Less flexible timescale for determination</p> <p>√ Establishes clear target date with reasonable time period.</p>	<p>√/ Establishes clear timescale for decision, may reduce delays.</p>	<p>– none.</p>	<p>Important benefits to affected parties while still supporting policy aims and neutral effect on LPAs.</p> <p>Change recommended.</p>

√ indicates positive impact from √ (low) to √√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 24

Part 20: Coal mining development by the Coal Authority and licensed operators

- 24.1 This Part relates only to development at coal mines. Classes A and B permit development underground, by a licensee of the Coal Authority or British Coal Corporation, in a mine in a '*designated seam area*' started before 1 July 1948. Extensive conditions apply to Class A relating to restoration requirements.
- 24.2 Classes C and D then permit development at an authorised site where required for the purposes of the mine in connection with coal mining operations. Appearance, size and use limitations apply under Class C (a 15 metre height limit and 1,000 m² size limit applies to buildings) and the removal and restoration following permanent cessation of mining operations are both required. Class D allows development without these size limitations but only with prior approval.
- 24.3 Class E provides for maintenance or safety works, with prior approval needed if appearance and size criteria are not met, but this should only be refused, or granted subject to conditions, in the same circumstances as Part 19, Class C.
- 24.4 These rights are now only used by private coal mining operators, the largest being UK Coal but with a number of smaller operators around the country. Only some operating mines date from before 1948, and in 1993 each colliery submitted a designated seam plan, which effectively defined the area in which permission was given to mine coal.
- 24.5 No specific restrictions apply in designated areas, Article 7 Directions do not apply and, in certain circumstances, the EIA regulations do not restrict permitted development under Classes B, C and D.

ISSUES

- 24.6 Reflecting to some extent the limited distribution and declining number of coal mines, only 2% of responding local planning and mineral authorities indicated that Part 20 rights caused them any problems or adverse effects while only 3% indicated any difficulties in interpreting this Part.
- 24.7 Some 17% of responding local authorities expressed a view on whether these rights are too restrictive or not. Of those, 82% considered them about right, 18% considered them too loosely defined and none as too restrictive. Only a few specific concerns were identified, which did not highlight significant problems:

- These rights should be deleted and the coal industry made subject to the same controls as other commercial development.
- It is not clear what the reference to safety of mines involves and whether it refers to rising mine water.
- Inconsistency in approach to development involving treatment of mining water, which is sometimes dealt with by prior approval and in other authorities by a planning application.

24.8 No responses on this Part were received from any interest groups and no significant issues were identified by relevant Government departments. Responses from users of Part 20 rights indicated that they were critical to their operations and not too tightly or too loosely defined, although concern was expressed on the implications of any reduction in these rights for a coal mining industry already facing difficulties.

24.9 No cases were identified of Article 4 Directions being used to restrict Part 20 rights.

SCOPE FOR CHANGE

24.10 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 20 and discussed below.

24.11 While Government energy policy is under review, the current objective is to ensure secure, diverse and sustainable supplies of energy at competitive prices and to ensure the provision of an effective energy infrastructure for consumers, business and domestic users. Part 20 generally supports this aim. While there is potential for conflict with countryside protection aims, any adverse environmental effects are controlled by the limitation of these works to an established mining area, the various limitations applying, and for some types of development, the prior approval requirement. No significant problems were identified by local authorities, users or interest groups.

24.12 On this basis, there is no obvious reason for significant change to this Part. **No changes are therefore recommended.** The only area where alterations could be considered is improved guidance on the operation of the prior approval procedures to encourage a more consistent approach but this is dealt with generally in Chapter 39.

Table 20: Assessment of recommendations for change to Part 20 of GPDO

Proposed changes to Part 20	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to ensure supply of minerals and energy.</p> <p>– potential for adverse impacts of development on aims to protect countryside but controlled by size limitations, restoration requirement and prior approval.</p>	<p>√ Helps reduce numbers of planning applications for repeated minor works.</p>	<p>√√√ Helps reduce numbers of planning applications for repeated minor works and associated delays and costs.</p>	<p>– applies to declining number of mines and potential for adverse impacts on sensitive landscape controlled by size limitations, restoration requirement and prior approval.</p>	<p>Limited scope for adverse effects adequately controlled by size, prior approval and other restrictions and generally outweighed by benefits of keeping repeated daily operations out of planning control.</p>
No changes proposed.	–	–	–	–	–

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 25

Part 21: Waste tipping at a mine

- 25.1 This part enables the creation of spoil heaps or infilling of excavations at mining sites using materials from the mining operation there.
- 25.2 Class A permits the deposit of mineral waste at a mine or on ancillary land, if derived from that mine. Tipping in excavated areas is restricted to the height of adjoining land, and elsewhere to no more than 10% of the deposit height in 1988 unless allowed for in a waste management or other scheme. In certain circumstances, the EIA restrictions do not apply to Class A.
- 25.3 The deposit of waste from coal mining operations on land included in a waste tipping site on 1 July 1948 is permitted by Class B, if in accordance with a '*relevant scheme*' approved before December 1988.
- 25.4 No special restrictions on these rights apply in designated areas.

ISSUES

- 25.5 Only 3% of responding local authorities indicated that Part 21 rights caused them any problems or adverse effects while a similar proportion indicated difficulties in interpreting this Part. Some 19% of responding local authorities expressed a view on whether these rights are too restrictive or not. Of those, 85% considered them about right, 15% considered them too loosely defined and none as too restrictive. Very few specific concerns were identified:
- Permitted development rights should be extended to minor waste management development.
 - Better interpretation is needed of vague terms (although no specific terms were identified).
- 25.6 Responses from users of this Part indicated that these rights were critical to their operations but defined about right.

SCOPE FOR CHANGE

- 25.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 21 and discussed below.

- 25.8 These rights broadly support current Government aims for energy and mineral production and tipping and disposal of material away from mines would require less sustainable transport of material. While there is potential for conflict with countryside protection aims, any adverse environmental effects are limited by the limitation of these works to an established mining area and the height limitations applying. In addition, no significant problems from this Part were identified by local authorities, users or interest groups. No obvious case was found for any relaxation of these rights and no suggestions were made to this effect by consultees.
- 25.9 On this basis, these rights should be retained and no case has been made for major changes or any relaxation. **No changes are therefore recommended to this Part.**

Table 21: Assessment of recommendations for change to Part 21 of GPDO

Proposed changes to Part 21: Waste tipping at a mine	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to ensure supply of minerals and energy.</p> <p>– potential for adverse impacts on aims to protect countryside and sensitive landscape but controlled by height limits and restrictions to designated waste areas.</p>	<p>√√√ Helps reduce numbers of planning applications for repeated minor works, possibly in the order of 1000s pa.</p>	<p>√√√ Helps reduce numbers of planning applications for repeated works and associated delays and costs.</p>	<p>impacts on sensitive landscape controlled by height limits and restrictions to designated waste areas. No cases of harm identified.</p>	<p>Limited scope for adverse effects adequately controlled by height and other restrictions and generally outweighed by benefits of keeping repeated daily operations out of planning control.</p>
No changes proposed.	–	–	–	–	–

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 26

Part 22: Mineral exploration

- 26.1 This Part allows for temporary operations for exploration for various minerals other than petroleum.
- 26.2 Class A permits development on any land for up to 28 consecutive days for mineral exploration, including drilling boreholes, seismic surveys, other excavations and provision of any connected structures. Such rights do not apply within 50 metres of housing, a hospital or school, nor in a National Park, an AONB, an SSSI or on a site of archaeological interest, or if certain size thresholds are exceeded. Conditions relate to times of operations, removal of topsoil and subsoil, removal of structures/materials and restoration. Exploration involving petroleum, which typically involves more extensive plant and more intensive activity, is not included.
- 26.3 Class B allows similar development as Class A but is less restrictive, allowing use of larger explosive charges and gives permission for 6 months, rather than 28 days. This reflects the prior notification required and the additional control provided by Article 7 Directions.
- 26.4 Article 7 of the GPDO allows the mineral planning authority to make a direction (which can be overruled by the Secretary of State) removing permitted development rights under Parts 22 or 23 for reasons such as location within sensitive areas, impact on listed buildings, nuisance to nearby housing or community facilities or endangering aircraft using nearby aerodromes. Any subsequent refusal of planning permission enables a claim for compensation.

ISSUES

- 26.5 Mineral exploration activity does not take place in all local authority areas. Reflecting this to some extent, a relatively small proportion (8%) of the responding local authorities indicated that Part 22 rights caused them any problems or adverse effects while only 5% indicated difficulties in interpreting this Part.
- 26.6 Some 26% of responding local authorities expressed a view on whether these rights are too restrictive or not. Of those, 88% considered them about right, 12% considered them too loosely defined and none as too restrictive. Very few specific concerns were identified:
- The size and extent of development permitted is excessive and effectively the same as that required for extraction.
 - The drafting provides too much scope for interpretation.
 - Unspecified inconsistencies exist between Class A and B.

- 26.7 Responses from users, relevant Government departments and interest groups on this Part identified few significant issues. Users of Part 22 generally considered these rights critical to their operations with only one indicating they were too restrictive. This related to a request to extend Part 22 permitted development rights to oil and gas exploration, on the basis that lack of such rights caused delays in exploiting reserves and no significant environmental effects arise. In support, reference was made to the existence of permitted development rights for such exploration in Northern Ireland and the Republic of Ireland.
- 26.8 Few responses were received from interest groups but these raised concerns on:
- the potential risk from Part 22 structures in airport safeguarding areas; and
 - potential for damage to archaeological sites with no opportunity for evaluation.

SCOPE FOR CHANGE

- 26.9 An assessment of the benefits and deficiencies of the current rights under this part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 22 and discussed below.
- 26.10 These permitted development rights support the broad aims of Government energy and mineral policies. While they have potential to conflict with aims to protect the countryside, built heritage and other environmental interests, any impacts would be limited given that they involve only temporary works with restoration conditions applying. The extensive limitations on scale and proximity to designated areas or uses as well as the prior approval and Article 7 procedures, control the scope for adverse impacts.
- 26.11 Based on the consultation responses, this part of the GPDO is not giving rise to major concerns or widespread planning issues. These rights also appear to continue to perform a useful function by reducing the need to submit repetitive and often uncontentious planning applications. On balance, these existing rights do not appear to cause adverse outcomes in policy terms and there is no reason for major change to them.
- 26.12 However, the case for extending permitted development rights to oil and gas exploration was considered. While these minerals are not excluded from the equivalent exploration rights in the Northern Ireland GDO, mineral operations in that region tend to be smaller scale than in England. Based on discussions with Government departments involved with minerals, it is understood that the main reason for oil and gas exploration not being included in Part 22 relates to the significantly larger plant and more intensive operations involved than for most other minerals. Including oil and gas in Part 22 would support policy aims for energy supply, and the Article 7 procedure gives opportunity for control in sensitive locations, while existence of permitted development rights for such activities in Ireland without evidence of harm arising, also supports the case for change.
- 26.13 However, the number of planning applications for oil/gas exploration does not appear particularly large and there appears some potential for adverse effects in open areas for longer periods than apply with other types of mineral exploration.

Discussions with several mineral planning authorities suggested a desire for keeping tight controls to allow conditions to be imposed to control impacts of this type of exploration, which are seen as much more extensive than for other minerals and often worse than at the mineral exploitation stage. Traffic, noise from 24 hour operations and lengthy exploration periods were identified as potential problems. In other parts of the GPDO, restrictions are being proposed to reduce adverse effects of mineral operations. On balance, it is considered that oil and gas exploration should remain subject to normal planning control.

- 26.14 There is some inconsistency with other parts of the GPDO in that the height of structures allowed is 12 metres compared to the 15 metres permitted under Part 19, for example. While the aim of consistency would support an adjustment, the current limitation appears to cause no problems and no change is proposed. **No changes are therefore recommended to this Part.**

Table 22: Assessment of recommendations for change to Part 22 of GPDO

Proposed changes to Part 22: Mineral exploration	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to ensure supply of minerals and energy.</p> <p>– potential for adverse impacts on aims to protect countryside and sensitive landscape but controlled by size thresholds, restrictions in designated areas, prior approval and ability to apply an Article 7 Direction.</p>	<p>√ Helps reduce numbers of planning applications for repeated minor works.</p>	<p>√√ Helps reduce numbers of planning applications for repeated works and associated delays and costs.</p>	<p>– potential for adverse impacts on sensitive landscape controlled by size thresholds, restrictions in designated areas, prior approval and ability to apply an Article 7 Direction. No cases of harm identified.</p>	<p>Existing rights generally accord with policy aims with range of controls in place to minimise adverse effects.</p>
1. Extend rights to Oil/Gas Exploration.	<p>√ would broadly support policy aims to ensure supply of minerals and energy.</p>	<p>√ possible very small reduction in numbers of planning applications.</p>	<p>√ Would help reduce numbers of planning applications for repeated works and associated delays and costs.</p>	<p>XX larger drilling equipment required has greater potential for adverse impacts on open areas and sensitive landscape although Article 7 Directions could be used to control these.</p>	<p>Potential for adverse impacts outweighs relatively small benefits in other areas. No change recommended.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 27

Part 23: Removal of material from mineral working deposits

- 27.1 In broad terms, these rights enable mineral operators and others to remove material from deposits held at mines or in other locations, for purposes such as allowing sale or processing of these materials or further processing. Such development may otherwise be considered as an engineering operation. Such rights are used, for example, by coal mining operators for reprocessing old waste tips to recover coal.
- 27.2 Class A permits, without any restrictions, the removal of material from a stockpile, which is broadly defined as a deposit of minerals for the purposes of processing or sale.
- 27.3 Class B allows removal from a mineral working deposit other than a stockpile, but subject to limitations including prior notification of the mineral planning authority. In addition, the area covered by the deposit must not exceed 2 ha. unless it only contains material deposited within the last 5 years.
- 27.4 No specific restrictions apply within designated areas but the power to withdraw permission under the Article 7 procedure applies to this Part, as for Part 22.

ISSUES

- 27.5 A limited number of local authorities are affected by mineral working areas. Correspondingly, only 7% of responding local authorities indicated that Part 23 rights caused them any problems or adverse effects while 4% indicated any difficulties in interpreting this Part. Some 23% of responding authorities expressed a view on whether these rights are too restrictive or not. Of those, 83% considered them about right, 17% considered them too loosely defined and none as too restrictive. Only a few specific concerns were identified:
- The right to remove what had been considered abandoned stockpiles from otherwise dormant quarries can have major impacts on sensitive landscape, particularly in National Parks, where the stockpiles are grown over with vegetation and become part of that landscape.
 - Some mining waste deposits are of historical importance and should be retained, in one case within a potential World Heritage Site but seeking to prevent this by an Article 7 Direction can give rise to a substantial compensation claim.
 - The 2 ha. area limit for deposits in Class B is excessive and conflicts with the rights under Part 6 where no such limit applies.

- There are some interpretation problems related to inadequately defined terms such as 'stockpile' and '*deposit*' and to when a stockpile can be considered to be abandoned.

27.6 All responding users of Part 23 indicated that these rights were important or critical to their operations, worked well and were defined about right. Only one interest group made a specific response on this Part, indicating that it was too loosely defined, with potential adverse impacts on areas of archaeological interest.

SCOPE FOR CHANGE

- 27.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 23 and discussed below.
- 27.8 These permitted development rights support the broad aims of Government energy and mineral policies. They also have some potential to conflict with aims to protect the countryside, heritage interest and certain other environmental interests although this impact should be limited since these rights would normally be exercised only within established mining areas. While consultation responses indicate that Part 23 rights give rise to few material planning issues, some impacts on sensitive landscape and historic areas have been reported. The limitations on scale as well as the Article 7 procedure provide controls on the scope for adverse impacts. Overall, an acceptable balance exists in relation to policy aims.
- 27.9 These rights also facilitate day-to-day activities essential to mining operations and reduce the need for planning applications for what would otherwise be a large number of repetitive operations. There is therefore a strong case for retaining these rights while considering some amendments to address specific concerns.
- 27.10 While consideration has been given to imposing greater restrictions or prior approval requirement in or adjoining National Parks, a degree of control already exists under the Article 7 procedure. While the risk of compensation from its use has been raised in relation to loss of historic stockpiles, this does not yet appear to be a widespread problem. If compensation is to be removed for Article 4 Directions, a similar approach could be considered for Article 7. However, if the Article 7 procedure is considered to be too cumbersome or ineffective, consideration should be given to restricting Part 23 rights within designated areas such as National Parks and AONBs. Although only a few cases of potential harm were identified, this change appears a reasonable one where relatively few but very important areas are involved.
- 27.11 Since the Article 7 procedure is available, there does not appear to be a strong case to extend prior notification to development in areas of archaeological importance. However, if this procedure is found to be ineffective in such areas and likely to give rise to compensation claims, there may be a case for this change, which would produce relatively few additional planning applications. To aid interpretation and understanding, the applicability of the Article 7 procedure should be specifically referred to within this Part.

- 27.12 While there may be some inconsistency with Part 6 with regard to the 2 ha. area limitation in Class B for stockpiles, this is not considered a reason in itself to remove this limit for Part 23, which does not appear to cause widespread problems.
- 27.13 **No changes are therefore recommended to this Part.** However, consideration could be given, if the Article 7 procedure proves ineffective or gives rise to unjustified compensation claims, to restricting Part 23 rights within National Parks and AONBs.

Table 23: Assessment of recommendations for change to Part 23 of GPDO

Proposed changes to Part 23: Removal of mineral material from mineral working deposits	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to ensure supply of minerals and energy.</p> <p>– limited potential for adverse impacts on aims to protect countryside and sensitive landscape given control available under Article 7.</p>	<p>√√ reduce numbers of planning applications for repeated minor works possibly in the order of 100s p.a. for each authority.</p>	<p>√√ Helps reduce numbers of planning applications for repeated operations and associated delays and costs.</p>	<p>X some potential for adverse impacts on sensitive areas where historic deposits form part of landscape. However, few cases of harm identified and scope to control exists under Article 7.</p>	<p>Limited adverse effects generally outweighed by benefits of keeping repeated daily operations out of planning control.</p>
No changes proposed.	–	–	–	–	–

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 28

Part 24: Telecommunications code system operators

- 28.1 These permitted development rights apply to various forms of telecommunications facilities but are available only to Code System Operators; these are companies granted a licence under Section 7 of the 1984 Telecommunications Act, which applies the telecommunications code to it in pursuance of Section 10 of that Act. There are currently 110 such operators, the best known ones being BT and mobile phone companies such T-Mobile (UK), BT 3G, O2, Vodafone, Hutchison 3G, Orange Personal Communications Service, Orange 3G and Dolphin Telecommunications. Part 24 rights do not apply to broadcasters such as the BBC, which are licensed under the Broadcasting Act 1981.
- 28.2 Class A permits development by or on behalf of a Code System operator for the purpose of the operator's telecommunication system in, on, over or under land controlled by that operator in accordance with his licence consisting of:
- a. the installation, alteration or replacement of any telecommunications apparatus;
 - b. the use of land in an emergency for a period not exceeding six months to station and operate moveable telecommunications apparatus required for the replacement of unserviceable telecommunications apparatus, including the provision of moveable structures on the land for the purpose of that use; and
 - c. development ancillary to radio equipment housing.
- 28.3 Conditions set out 15 criteria to determine whether development is permitted by Class A(a) including the height of a mast, building or structure on which apparatus is to be installed and the apparatus itself as well as the base area of the installation, and the cumulative size of any dish antennas. Further limitations apply on listed buildings and scheduled monuments, in Article 1(5) land, within an SSSI and beside a highway.
- 28.4 Conditions also require any apparatus or equipment to be sited to minimise its effect on the external appearance of the building and its removal when no longer required for telecommunications purposes. Prior approval is required for development:
- on Article 1(5) land or land which is within an SSSI; or
 - on any other land for erection, alteration, or replacement of a mast, or of an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure by 4 metres or more; or of radio equipment housing with a volume in excess of 2.5 cubic metres; or of development ancillary to radio equipment housing.

- 28.5 This is one of the most difficult sections to interpret within Part 24 and one which is open to misinterpretation concerning whether or not prior approval is required.
- 28.6 Typical types of development carried out under this Part include erection of mobile phone base stations involving the erection of free-standing masts and the installation of antennas on existing buildings or structures. Other than masts, antennas and equipment cabins, permitted operations include provision of compound fencing, laying out of access tracks and provision of power supplies. In terms of level of usage, an individual operator launching a new network could realistically submit between 2,000-3,000 prior approval applications a year. For an operator with an established network the figure would be considerably less although the constant upgrading of sites will invariably require a steady stream of future applications.
- 28.7 In the late 1990s, the 28-day determination period for telecommunications applications was considered too short to enable meaningful public consultation to be undertaken, and the Government received a significant number of representations about masts being erected within residential areas without the public being informed. Despite strong pressures from local authorities and interest groups, the complete removal of these permitted development rights was rejected and instead the period for determination was extended to 56 days. Despite this, Part 24 is still seen by some as unnecessarily giving the telecommunications industry wider permitted development rights than other sectors.
- 28.8 Neither Government guidance note PPG8: *Telecommunications* nor Part 24 explains the purpose of giving permitted development rights to telecommunications operators although it is reasonable to assume they are intended to support Government aims to facilitate the growth of new and existing telecommunications systems. Since the increase to a 56 day determination period, the main advantage of the prior approval system is the certainty of a decision within this fixed time period.

ISSUES

- 28.9 Almost 70% of responding local authorities indicated difficulties interpreting or using Part 24, and the same proportion identified this part as one causing them adverse impacts, making this one of the most problematic parts of the GPDO. Some 78% of planning authorities gave a view on whether Part 24 was too restrictive or otherwise. Of these, 80% considered Part 24 rights to be loosely defined, 17% saw them as about right and only 3% as too restrictive.
- 28.10 There were many, very strong views that Part 24 should be removed completely, and against the prior approval procedure. The general view expressed by the majority of authorities was that all but the most minor telecommunications development should be subject to full planning control as is the case in Scotland. Some of the main concerns were:
- the complexity of the drafting and difficulty in interpretation;
 - insufficient time for authorities to determine applications for prior approval;
 - insufficient public involvement;

- authorities only allowed to consider siting and appearance and cannot give weight to public concerns about health;
- lack of understanding amongst some planning officers about operation of the prior approval system and how to determine whether or not prior approval is required; in particular there is uncertainty as to whether a proposal can be refused because the local authority do not consider that the siting of apparatus minimises the effect on external appearance; and
- Part 24 assumes an understanding of other legislation such as the Telecommunications Act.

- 28.11 No cases were identified of Article 4 Directions being used to remove permitted development rights for telecommunications development or of these rights being curtailed by the requirement for EIA.
- 28.12 Some 13% of interest groups considered Part 24 rights as not restrictive enough, only 2% as over-restrictive. The main concerns were the visual impact of telecommunications masts on the built and rural environment, and adverse effects of telecommunications equipment on streetscape.
- 28.13 Although responses from operators using Part 24 were limited, those responding considered these rights critical to their operations. The common view was that the level of controls applying to these permitted development rights was about right and that the scope and procedures for prior approval should remain the same.
- 28.14 The two operators who responded both identified Parts 24 and 25 as being particularly problematic, with one drawing attention to the problems relating to definitions, conditions and prior approval procedures. The other considered that a significant part of the problem is that local planning authorities do not understand Part 24.
- 28.15 Operators considered the level of control in Article 1(5) areas to be about right and neither sought any changes. However, whilst it was considered by Operators that Article 4 Directions were generally being used properly and did not require procedural changes, it was felt that in some circumstances such directions were imposed by authorities as a result of political intervention from members.
- 28.16 One respondent identified a possible conflict resulting from the Government providing 3rd generation (3G) mobile phone licences to operators and the need to roll-out new base station sites to meet coverage levels required as an express term of those licences.
- 28.17 On scope for changes, responding operators considered Part 24 generally operates well and needs only to be made easier to understand and interpret, but that incorrect interpretation by local authorities may result in network rollout delays and inhibit the efficient delivery of network services. Otherwise, they consider local authorities need to improve their knowledge of telecommunications at officer level. Experience suggests that where authorities have an officer with specialised telecommunications training, efficiency in dealing with prior approval applications considerably improves. It was hoped that the Best Practice Guide would improve interpretation and the service received from local authorities.

- 28.18 Part 24 was also mentioned by a number of the organisations with an interest in aviation matters. One respondent felt that the level of consultation for prior approval applications was insufficient and that England should follow Scotland and remove permitted development rights for ground based masts; otherwise telecommunications masts within airport safeguarding areas should always require full planning permission to ensure proper consultation takes place. Another group commented that the GPDO should be amended to require telecommunications operators to consult with airport operators.
- 28.19 Currently Part 24 requires masts within 3 kilometres of the perimeter of an aerodrome to be notified to the CAA, the Secretary of State for Defence or the aerodrome operator, before making an application for prior approval. In practice the problem here appears to be that the CAA is only responsible for a small number of the aerodromes and it is difficult for operators to determine the most relevant consultee. This procedure should be amended as indicated in Section 39 to require both the CAA and the aerodrome operator to be notified about proposals within the specified area, with the GPDO User Guidance document providing relevant airport details. This would ensure that all relevant parties were notified about the proposal. Whilst it is understood that there have not been any accidents involving aircraft crashing in to telecommunications masts, an amendment along the above lines should be taken as a precautionary measure.
- 28.20 One respondent expressed concerned that, due to the short timescales within which local planning authorities are required to determine prior approval applications, the local authority has to rely upon the applicant to carry out the consultation with the CAA or aerodrome operator. This is different to the procedure for a full planning application where the consultation is undertaken by the local authority once the application is submitted.

SCOPE FOR CHANGE

- 28.21 Since the Government carried out a full review of the permitted development rights for masts under 15 metres high in 2001, and conditions associated with Part 24 rights were tightened up, this study was not to review the principles of Part 24 and only consider whether its provisions could be simplified. An assessment of the benefits and deficiencies of the current rights under this Part, in terms of policy aims and effects on key stakeholders, is set out in Table 24.
- 28.22 Government policy on telecommunications is to facilitate the growth of new and existing telecommunications systems whilst keeping the environmental impact to a minimum and protecting public health. There is likely to be increased demand for new telecommunications sites as operators roll out their new third generation networks, with a high proportion of new sites being progressed as permitted development through the prior approval system.
- 28.23 Rather than seeking changes to specific areas of Part 24, most local authorities simply sought complete removal of these permitted development rights and prior approval procedures and replacement with full planning controls. However, need for the following specific changes was repeatedly raised by respondents (including the operators):

- to simplify Part 24 and re-write in plain English;
- to include more definitions e.g. *'highway'*, *'adjacent'*, *'mast'*, *'supporting structure'*; and
- to include flow charts, tables or illustrations to facilitate comprehension.

28.24 Issues which are specific to Part 24 are considered in turn below.

Definitions

28.25 Confusion is caused by the term *'wall or roof slope'*. Paragraph A.1(g)(i) removes permitted development rights for equipment located on wall or roof slope facing a highway and within 20 metres of one. It is not clear whether this restriction is for occupational safety or visual impact reasons. Operators have encountered problems with planning authorities' interpretation of a wall or roof slope, with alternative definitions for a *'wall'* including *'any solid vertical face'* while others consider it needs to consist of *'bricks and mortar'*. One example where this is an issue is fire station drill towers.

28.26 With regard to *'roof slope'*, generally Building Surveyors (and the RICS) consider *'flat roofs'* to be any roof with a pitch of less than 15 degrees. Therefore, if antennas were mounted on a roof with a slope of greater than 15 degrees, they would be interpreted as being installed on a roof slope and not permitted development if they were within 20 metres of a highway. This is relevant where antennas are mounted on poles that are positioned on a flat roof and therefore permitted development rights would be applicable. The above definition would also clarify the status of antennas facing a highway but mounted on the rear face of a parapet wall. If this clause is to be retained within Part 24, the terms *'wall'* and *'roof slope'* need to be defined and the following are suggested:

'Wall' – a solid vertical face.

'Roof Slope' – a part of a roof where the pitch is greater than 15 degrees.

28.27 The lack of definition for *'highway'* and *'adjacent to a highway'* causes disputes between Part 24 operators and local authorities, particularly in relation to private roads, service roads and footpaths, and clarification would save significant time and resources. This issue is dealt with in Chapter 17.

28.28 There also appears some need for clarification, perhaps in the User Guidance document, on the interpretation of the requirement that any apparatus or equipment must be sited to minimise its effect on the external appearance of the building. Operators can argue that a particular siting is the only practical one in technical and operational terms while local authorities are unclear to what extent they can dispute this and refuse a proposal on the grounds on unacceptable appearance in these circumstances. It would be beneficial to provide some guidance to local authorities on this issue, if possible, although it is not clear from this study what that advice should be.

Antennas

28.29 The absence of a definition of *'antenna'* has led to disputes over the permitted status of the minor apparatus used for fixing the antennas. Operators feel that this should be defined such that *'elements which are reasonably required for the*

operation of antennas are included as part of the *antenna*. One operator's view was that *antenna* should include antenna supports, mountings, fixings, brackets, lightening conductors, and feeder cable connections. This was considered to be consistent with the definition of satellite antenna in Class H of Part 1, since Article 1(2) describes satellite antenna as apparatus designed for transmitting microwave energy to satellites and receiving it from them, *and includes any mountings or brackets attached to such apparatus*. The recently published Code of Best Practice provides the following definition:

“Aerial /Antenna – A device which transmits and receives radio waves. There are different designs in operation including omni-directional antennas, sectored antennas and dual/tri-band antennas.”

- 28.30 However, this definition fails to provide the level of certainty sought by operators and local authorities and it is considered that any definition needs to confirm whether mountings and brackets form part of the antenna, otherwise this point will continue to be disputed.

Antenna Systems

- 28.31 As the third generation telecommunications network is rolled out, some planning authorities question whether this apparatus constitutes a separate *antenna system*. Operators maintain that antennas used to expand services already offered do not constitute a different *antenna system* for the purposes of Part 24, provided that they are part of the same operator's network and systems and services operating licence. On the other hand, it could be argued that an antenna system comprises only the equipment installed by an operator in accordance with a particular operating licence, in which case the 2G and 3G antennas would comprise two different antenna systems since they are operated under separate licences and utilise a different wavelength and technology. Any amendments to Part 24 should clarify this issue and take into consideration any changes to the licensing regime resulting from the new Communications Bill.

Masts

- 28.32 A frequently raised issue is what constitutes a mast, particularly when dealing with roof mounted equipment. The definition of *mast* in Part 24 is a *radio mast or a radio tower*, which is clearly vague and open to a variety of interpretations. Whilst operators argue that they install *pole mounted antennas* on buildings, local authorities argue that these are actually monopole *masts*. Generally, the more antennas that are installed on the mounting pole the greater the likelihood of local authorities interpreting the installation as a mast. The Code of Best Practice provides the following definition of a mast:

“A ground-based or roof-top structure that supports antennas at a height where they can satisfactorily send and receive radio waves. Typical masts are of steel lattice or tubular steel construction. New slimmer versions of masts are now available which can be painted to blend in with their surroundings, disguised as trees or used in conjunction with street lighting and CCTV cameras. Masts themselves play no part in the transmission of radio waves for mobile telecommunications.”

- 28.33 With a traditional panel antenna, the antenna chassis is fixed to the pole through two mounting brackets, one towards the top of the antenna's chassis and one at the bottom; these brackets are essential to ensure that mechanical down-tilt can be applied to the antenna. A conventional panel type antenna does not have the inherent structural strength to withstand the forces that would be placed on it if it was not mounted using a two bracket mounting and therefore the mounting tube or pole is required to provide the essential structural rigidity to the antenna. The mounting tube is usually fixed either to the roof of the building or a parapet wall or plant room. The bottom of the mounting tube can often be fixed directly to the roof or on a free standing base that is weighted down on the roof surface.
- 28.34 In some cases a slim tri-sector antenna is mounted directly onto the top of a pole. In this arrangement, due to the slim nature of the antenna and the narrow pole, there is a strong argument that such an installation is not a mast but is an antenna on a supporting pole.
- 28.35 This type of installation is distinctly different to a '*mast*' on a building or structure. In order to attach panel antennas to a mast (either roof top or ground based) a separate mounting arrangement is usually required. Effectively the '*antennas*' (including all the mountings) are totally separate to the support structure that is a '*mast*'. The antenna chassis cannot fix directly to the mast and it could be argued that this is the key to when a roof top pole is a mast and when it is merely a mounting. The mountings are merely longer in the case of a roof top solution when compared with a mast mounted solution.
- 28.36 Some local authorities have argued that because multiple antennas can be attached to a mounting tube then it is a mast. If this was the relevant test of a '*mast*' then conversely it would be possible to argue that the installation of a roof top monopole with one antenna would not be a mast. Therefore, any definition of a mast that focuses on the number of antennas has obvious flaws. Whilst the arguments put forward by the operators can be justified, they have not been tested in law and until a definitive definition is provided, differences of interpretation will continue. A clear definition is required to differentiate between pole mounted antennas and roof mounted masts and would helpfully be supported by illustrations in User Guidance document to provide further clarification. No such illustrations are provided in the new Code of Best Practice.
- 28.37 The key question is, therefore, when does a supporting structure become a mast? As explained above, this is a matter of fact and degree as there are no accepted statutory definitions. A series of glossary definitions are included in the Code of Best Practice by ODPM. This document sets out the definition for a stub mast as being:
- “A roof-mounted mast structure which supports multiple antennas at a height where it can satisfactorily send and receive radio waves. A stub mast is typically 4-6 metres high and of steel lattice construction. Stub masts themselves play no part in the transmission of radio waves.”*
- 28.38 This definition tends to support the approach commonly adopted by operators that, for a supporting structure to fall within the definition of a mast, it is normally of a certain height and size and can support a full antenna array for a base station, often on a headframe. By contrast, pole mounts as the other typical form of supporting

structure, are not usually so high and tend only to support one or two antennas. As such they are usually deployed in series to support all the antennas required for a base station.

- 28.39 Whilst the definitions which have been included in the Code of Best Practice provide a starting point, it is considered that the use of illustrations within the GPDO would make the situation clearer, particularly in relation to differentiating between a pole mount and a mast on a building. Whilst the GPDO permits the erection of pole mounted antennas, of not more than 4m above the height of the building at the point at which they are installed, no real guidance is currently provided on exactly when a mounting pole becomes a monopole mast.

Equipment Housing Volume

- 28.40 Some local authorities consider that development ancillary to radio equipment housing contributes to the volume of the housing and should therefore be taken into account when assessing radio equipment housing cubic capacity. Operators maintain that the volume of the housing is calculated from the external dimensions of the housing itself and that this is separate to any development ancillary to radio equipment housing, such as electrical connection cabinets and AC units which need to be external to the cabin. It is the consultant's view that the operators' interpretation is correct, but this requires clarification.
- 28.41 Reflecting disputes with local authorities, operators seek clarification that the volume limits of radio equipment housing on a building specified in A.1(D)(ii) are not cumulative and apply to each installation of a housing with no limit on the number of housings installed at any one time. The consultant's view is that this volume limit is cumulative if more than one equipment housing is installed at the same time. However, if these were the subject of separate applications for prior approval and are installed on separate occasions, it would be reasonable to clarify that the limit should apply to each individual housing.

Flow Charts/Illustrations

- 28.42 Many respondents requested that Part 24 include some form of flow chart or illustrations to assist local planning authorities in understanding what is and what is not permitted development. The ODPM document '*A Householder's Planning Guide for the Installation of Satellite Television Dishes*' includes an illustration showing suitable locations for dishes, and locations that are generally considered unsuitable. This provides a clear and easily understood guide which significantly reduces the likelihood of misunderstanding. There appears scope for the inclusion of similar relating to Part 24 illustrations in a User Guidance document, for example to illustrate what is meant by a wall or roof slope facing a highway, or illustrate the difference between a mast on a building and a pole mounted antenna.
- 28.43 One area where this would be particularly useful is in explaining the nature of works that can be undertaken under the Licence Notification Regime without the need for the prior approval. One authority specifically referred to Condition 4, where it explains that prior approval is required where an antenna is installed on a building and the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 4 metres or more. This is one area where local authorities frequently seek prior approval applications where they are not required, suggesting that this condition is currently difficult to interpret. A visual aid would assist in this interpretation.

- 28.44 There are also disputes as to whether items such as handrails and access ladders can be treated as telecommunications apparatus and installed without the need for prior approval. Whilst these items may be required in association with the telecommunications operation, the consultants consider that they should not be defined as telecommunications apparatus. Handrails and ladders are often more harmful to the external appearance of a building than the telecommunications apparatus itself and should be considered as ancillary development for which prior approval is required. In this way local authorities will have the ability to negotiate with operators to make this ancillary development as visually unobtrusive as possible in accordance with Government aims of improving the quality of built development.
- 28.45 Whilst there is scope for illustrations to provide guidance on matters of siting, it is considered that Part 24 is too complex to be easily translated into a single flow chart. Whilst it may be possible to break the criteria down into separate charts for different types of development (e.g. ground based mast or roof mounted equipment) it is unlikely that this system would be any simpler to use than the current text. The illustration in Annexe 8 provides an example of a flow chart relating to the development of a new ground based mast and provides guidance on whether prior approval or full planning permission is required. A similar chart relating to the installation of telecommunications equipment on an existing building or structure would be exceedingly complicated to use and on this basis it is concluded that the current criteria-based approach is preferable.

Two Stage Process

- 28.46 One of the complications with the current prior approval procedure is its two stage aspect, i.e. the application for a determination on whether prior approval of detailed siting and appearance is required, and, if so, a second determination as to whether the submitted details are approved or refused. Most operators now always submit full details with an application for prior approval so that there is no need for a planning authority to make a determination that it does not want to approve details of siting and appearance. This procedure could be simplified to take account of current practice, and to make it a single stage process in line with the proposals for prior procedure generally in Chapter 39.

Amendments

- 28.47 The guidance needs to be clarified to enable the approval of amended details following submission of a prior approval application. As currently worded, some local planning authorities seek new applications to approve amendments to an original application. This is because the wording can be interpreted as tying any approval to only the details submitted with the application. This means that even if only minor changes are required to prior approvals, for example a change in fence type or height to take account of the site provider's wishes, a new application can be required. This is unhelpful and a waste of public and private sector resources. Part 24 should be amended to specify that local authorities can agree minor amendments to prior approvals.
- 28.48 Such a change would accord with the approach in Circular 31/92 in relation to the variation of planning permissions, which states in paragraph 13 that:

“If an applicant wishes to vary his proposal after planning permission has been granted... the local planning authority will have to decide whether the proposed variation is significant enough to require the submission of a fresh planning application.”

- 28.49 In order to bring the prior approval procedure in line with standard planning permissions in terms of the treatment of minor variations, condition A.3(7) would need to be amended to indicate that development shall not be begun before the occurrence of one of the following:

*“a. the receipt by the applicant from the local planning authority of a written notice approving the details submitted, **or as amended following submission;***

*b. the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without notifying the applicant, in writing, of their refusal of the details submitted **or as amended following submission.**”*

Use of Conditions

- 28.50 Operators and many local authorities believe that there is no scope to attach conditions to prior approvals. This means that in cases where an application would be acceptable subject to a condition (e.g. landscaping being provided and retained in perpetuity), the application may be refused even if considered acceptable in principle. However, the consultants understand that certain conditions can actually be applied to prior approvals in the same way as for reserved matters approvals. Greater clarification is therefore needed in the GPDO User Guidance document that this is the case and on the types of conditions that apply. In addition to landscaping, this should clarify that local authorities can control the colour of masts and ancillary equipment, enabling them to approve applications that they may otherwise feel justified in refusing. The User Guidance document should also clarify that the tests for conditions in Circular 11/95 apply.
- 28.51 Whilst greater use of conditions may enable approvals to be issued where previously applications would be refused, such an approach would not be acceptable to most operators unless it related solely to conditions which did not require the submission of further details e.g. requiring a mast to be painted a specified colour. One of the main benefits to operators of the prior approval process is that a decision is guaranteed after 56 days, enabling development to start on the 57th day. Conditions requiring further approvals would remove this benefit since local authorities could take as long again to discharge the condition. With a target of 8 weeks for processing applications to discharge of conditions, this would add an unacceptable delay to the prior approval process and the element of certainty would be lost.
- 28.52 An alternative approach to conditions would be to introduce the ability for local authorities and operators to agree a mutual extension to the 56 day period to enable negotiation on minor issues, which would in the case of a planning application be dealt with by condition. For example, if an authority felt that a mast would be acceptable if coloured green, they could ask the operator to amend the application to specify painting in a certain colour. A mutual extension period would allow time for such negotiations to take place. Under such a system, the operator would have the option of agreeing a specified time extension and obtaining an approval or accepting a refusal at the end of the 56 day period.
- 28.53 However, such amendment is unlikely to be supported by operators who could perceive local authorities using the need for negotiations as an excuse to extend the determination period to suit their own timescale. It is already common practice for operators and local authorities to discuss the detailed design of schemes during the

determination process and thus the opportunity already exists for authorities to request amendment to certain aspects before a decision. Since most consultees were satisfied with the current process, it is recommended, on balance, that the current system be retained.

Highway Limitation

- 28.54 Under Class A.1(g) the provision of a face mounted antenna on a building, often an ideal planning solution, requires full planning permission if the wall faces a highway. Yet the same antenna could be mounted on a 3.9 metre high pole on the roof of the building without even requiring prior approval. This is a far more visually intrusive solution but is often the most practicable for operational reasons and cannot be controlled by the local authority. It is considered that the limitation on antenna facing a highway set out in Class A.1(g)(i) is counterproductive, encourages poor design and should be removed. If there are other reasons for its retention, prior approval should apply where it faces a highway rather than full planning permission.

Extension of Part 24 rights to Licensed Broadcasters

- 28.55 At present, Part 24 only relates to telecommunications Code System operators, whereas PPG8 applies to all forms of telecommunications development. Thus whilst there is consistency in the policy approach to these different forms of telecommunications, a significant anomaly exists in their treatment under legislation resulting from the fact that most television and radio broadcasting activities are licensed under the Broadcasting Act 1981. They do not, therefore, benefit from telecommunications code powers and permitted development rights. Cable television is licensed under the Telecommunications Act 1984 and is, therefore, an exception. For this reason, the approach taken towards these different forms of communications is inconsistent.
- 28.56 An example of this inconsistency is that a telecommunications Code System operator can install antennas on an existing mast without the need for approval from the local planning authority. The mast might have originally been installed by a broadcaster and be in the ownership of the broadcaster yet the broadcaster would require full planning permission if it wished to install a further dish which resulted in a material impact on its external appearance. Broadcasters feel that there is no planning justification for their equipment to require full planning permission and nor that any overriding social or economic factors justify a distinction between different types of operator.
- 28.57 A further concern by broadcasters is that full planning permission is required to alter or replace existing apparatus, whereas telecommunications Code System operators can do so as permitted development subject to the relevant prior approval procedures. Alteration or replacement of masts is often required to enable masts, installed initially for public broadcasting, to be shared. In this respect the lack of permitted development rights is counterproductive to Government encouragement of mast sharing to avoid unnecessary proliferation. On this basis, consideration should be given to extending Part 24 rights to broadcasters licensed under the Broadcasting Act 1981.
- 28.58 By extending permitted development rights to broadcasters there would be a significant reduction in local planning authority workload, particularly in terms of the number of planning applications submitted for new or replacement antennas on existing structures. Due to the minor nature of the majority of these proposals there would be little environmental impact. New masts would still be subject to either prior approval or full planning permission and so their siting and appearance could

still be controlled by the Local Planning Authority. Extending Part 24 rights to broadcasters could also have the benefit of encouraging the upgrading of masts to allow site sharing in accordance with Government guidance.

CONCLUSION

- 28.59 Overall, while there is strong support from local authorities for major change to Part 24, this is outside the scope of this study. The emphasis of proposed changes is therefore on simplifying the text of Part 24 to make it easier to interpret and use, including through the use of illustrations and clear definitions. Minor changes to the current limitations could be considered to help encourage operators to adopt the least visually intrusive designs. The scope of Part 24 could also be extended to give rights to licensed broadcasters rather than just telecommunications Code System operators. Some minor alterations may also be required to take account of changes to be introduced through the forthcoming Communications Bill such as new definitions e.g. *'electronic communications apparatus'* in place of *'telecommunications apparatus'*.
- 28.60 On the basis of the above analysis, the following recommendations for modification are proposed:
- **Introduce a requirement for applicants for prior approval to notify the CAA and aerodrome operators about proposals within 3 Km. of an aerodrome, as well as the Secretary of State if applicable.**
 - **Include definitions for *'wall'* and *'roof slope'* to aid interpretation.**
 - **Provide clarification as to whether the term *'antenna'* includes mountings and brackets.**
 - **Provide clarification as to whether the term *'antenna system'* relates to all the antennas installed under a specific licence or all the antennas installed by a specific operator.**
 - **Include illustrations to help differentiate between pole mounted antennas and masts.**
 - **Clarify exactly what constitutes *'equipment housing volume'* and that this volume is cumulative if more than one equipment housing is installed at the same time.**
 - **Extend Part 24 rights to licensed broadcasters.**

Table 24: Assessment of recommendations for change to Part 24 of the GPDO

Proposed changes to Part 24	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims to facilitate the growth of new and existing telecommunications systems.</p> <p>X potential for adverse impacts of unsympathetic development to conflict with protection of visual amenity.</p>	<p>√ Small reduction in numbers of planning applications but offset by applications for Prior Approval which involves similar workload.</p>	<p>√√ Prior Approval process helps to avoid delays caused by LPAs failing to determine applications within the statutory 8 week period.</p>	<p>XX Misunderstanding by general public leads to concerns about lack of public consultation. Licence Notification proposals have potential for significant adverse impacts on visual amenity.</p>	<p>– Strong consensus amongst LPAs and general public that pd rights should be removed. Telecommunications industry generally happy with existing situation.</p>
1. Simplify text, add illustrations and definitions.	<p>√ Would still support policy aims.</p>	<p>√√ Likely to reduce workload by reducing number of enquiries about interpretation and operation of Prior Approval procedure.</p>	<p>– No significant effect</p>	<p>√√ By improving public understanding of the system public confidence should increase.</p>	<p>√√ Significant benefits for many users. Change recommended.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 29

Part 25: Other telecommunications development

- 29.1 This Part grants permission for the installation, alteration or replacement of a microwave antenna (which includes both a satellite antenna and a terrestrial microwave antenna) on any building or structure, with the exception of a dwelling-house on which Part 1 Class H gives permitted development rights for a single satellite antenna. Part 25 is more limited than Part 24 but its rights are not restricted to telecommunication Code System Operators.
- 29.2 Part 25 contains two classes that differentiate between the type of antenna (microwave or satellite) and the height of building (above or below 15 metres):
- Class A permits the installation, alteration or replacement on any building or other structure of a height of 15 metres or more of a microwave antenna and any structure intended for the support of a microwave antenna; and
 - Class B permits the installation, alteration or replacement on any building or other structure of a height of less than 15 metres of a satellite antenna.
- 29.3 As with Part 24, conditions restrict the number of microwave antennas on the building, the size of the antennas, and the height of the antennas.
- 29.4 In addition, Class A rights do not apply to article 1(5) land, while Class B restricts satellite antenna on a chimney, on a wall or roof slope which fronts the highway (or waterway in the Broads). Additional conditions apply requiring antennas to be sited so as to minimise their effect on the external appearance of the building or structure on which they are installed, and their removal as soon as reasonably practicable when no longer needed.
- 29.5 The restrictions in A.1(g) and B.1(c) relate to driver information systems and are required in order to avoid overlap with Part 29.
- 29.6 Part 25 rights tend to be used less than Part 24 and generally relate to smaller scale developments such as the installation of a small number of dishes by a particular company, for example by a university, to link buildings on a campus or by a betting shop to install a satellite dish to receive sports broadcasts.

ISSUES

- 29.7 Whereas 69% of local authorities responding to the survey stated that they considered Part 24 as difficult to interpret or use, just under 40% stated that they found Part 25 difficult. Some 39% also identified Part 25 as giving rise to particular problems or impacts (compared to 70% for Part 24). On this basis it is evident that whilst Part 25 does cause some problems, it is much less problematic for local authorities than Part 24.
- 29.8 Some 68% of responding local authorities expressed any view on how well defined these rights are. Of those, 59% considered these rights as too loosely defined, 37% as about right and only 4% as too restrictive (compared to 70% considering Part 24 too loosely defined). No specific concerns were raised by local authorities and none of the operators consulted had comments on Part 25, as all their development is carried out by virtue of Part 24.

SCOPE FOR CHANGE

- 29.9 Since the Government is carrying out a review of the planning controls over satellites and antennas (see paragraph 5.17), this study was not to review the principles of Part 25 and only consider whether its provisions could be simplified. The responses to the consultation on that study should inform any future changes to Part 25, as well as Part 1.
- 29.10 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 25 and discussed below.
- 29.11 These rights generally support Government aims for telecommunications, which are to develop competition and widen the availability of advanced telecommunications services throughout the UK in order to assist economic efficiency. While there is some potential for conflict with policy aims on design quality and protection of rural and built environment, these are limited by the various size limitations that apply and the additional restrictions within designated areas. Overall, these rights appear to have a positive balance and achieve generally positive outcomes in terms of policy aims and there is no case for major change to them. However, in an attempt to simplify this part, it is considered that improvements could be made in a number of areas.
- 29.12 One of the main areas with the potential for confusion appears to be the differentiation in Classes A and B between ‘*microwave antennas*’ and ‘*satellite antennas*’, for which the definitions in Article 1(2) are:
- microwave – means that part of the radio spectrum above 1,000MHz;
 - microwave antenna – means a satellite antenna or a terrestrial microwave antenna;
 - satellite antenna – means apparatus designed for transmitting microwave radio energy to satellites or receiving it from them, and includes any mountings or brackets attached to such apparatus; and
 - terrestrial microwave antenna – means apparatus designed for transmitting or receiving terrestrial microwave energy between two fixed points.

- 29.13 No guidance is given in Part 25 as to the reasoning behind this differentiation. However, Class B provides no permitted development rights for terrestrial microwave antennas on buildings or structures below 15 metres in height, as only satellite antennas are permitted under this Class. There is also a difference in the sizes permitted under Class A (buildings over 15 metres). Whilst satellite antennas are permitted to be up to 90 centimetres, microwave antennas are permitted to be up to 1.3 metres when measured in any direction. Yet on buildings of less than 15 metres, satellite antennas are limited to 70 centimetres.
- 29.14 It is considered that there is little material difference between a terrestrial microwave antenna and a satellite antenna and thus an argument for removing the differentiation between the two from Part 25. However, there is clearly a need for a difference in the conditions applying to buildings or structures above and below 15 metres in height, as the visual impact of development on structures of different heights can be significantly different.
- 29.15 On this basis, it is considered that the wording of Classes A and B should be amended as follows:
- Class A – The installation, alteration or replacement on any building or structure of a height of 15 metres or more of a microwave antenna (satellite or terrestrial) and any structure intended for the support of a microwave antenna.
 - Class B – The installation, alteration or replacement on any building or structure of a height of less than 15 metres of a microwave antenna (satellite or terrestrial) and any structure intended for the support of a microwave antenna.
- 29.16 At the same time, alterations would be needed to the conditions to remove the differentiation between satellite and other types of microwave antenna. It is suggested that condition A.1(d) and A.12 (e) be revised as follows:
- “d. the size of the antenna, including its supporting structure but excluding any projecting feed element would exceed 1.3 metres;*
- e. the highest part of the antenna or its supporting structure would be more than 3 metres higher than the highest part of the building or structure on which it is installed or is to be installed.”*
- 29.17 Condition B.1(f) would also need to be revised to change the reference to satellite antenna to microwave antenna, as follows:
- “f. there is any other microwave antenna on the building or other structure on which the antenna is to be installed.”*

29.18 On the basis of the above analysis, the following recommendation for simplification is proposed:

- **remove the differentiation between a terrestrial microwave antenna and a satellite antenna but amend conditions to control visual impact of antennas on buildings or structures above and below 15 metres in height.**

29.19 This change is not considered likely to give rise to any adverse visual impacts and it is not anticipated that any significant impacts on local authority workloads should result.

Table 25: Assessment of recommendations for change to Part 25 of the GPDO

Proposed changes to Part 25	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Broadly support policy aims to facilitate the growth of new and existing telecommunications systems.	√ Small reduction in numbers of planning applications.	– Provisions complex for some users but useful to the majority as avoids the need for applications.	– Impact limited due to size and height thresholds.	– Strong consensus amongst LPAs and general public that all pd rights should be removed. Telecommunications industry generally happy with existing situation.
1. Amend wording to remove differentiation between microwave and satellite antennas.	√ Would still support policy aims	√ Likely to reduce workload by reducing number of enquiries about interpretation.	√ Simplify interpretation for users without increasing impact on environment.	– No change to size thresholds so no greater environmental impact.	√ Benefits for many users in terms of simplifying guidance. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 30

Part 26: Development by the Historic Buildings and Monuments Commission for England

- 30.1 This Part allows development by English Heritage to maintain, repair or restore certain buildings or monuments in its care, to erect screens, fences or covers to protect or safeguard a building or monument, or to carry out works to stabilise ground conditions of buildings.
- 30.2 Such works only apply to buildings that English Heritage hold as guardians. They have to be required to secure the preservation of the building or monument, and must not involve an extension. The erection of screens, fences etc. to protect buildings is permitted subject to any related structure being removed after 6 months or an agreed longer period.
- 30.3 The purpose of these rights appears to be to enable English Heritage to perform its role of maintaining certain buildings, which can be listed buildings or ancient monuments requiring urgent repairs, without being delayed by the need for a planning application. As the primary role of English Heritage is to conserve such buildings with minimal alteration of the original fabric, it is reasonable to expect that such rights would not be abused.
- 30.4 It is not certain why only English Heritage is given these rights and not other bodies responsible for maintaining important buildings, such as the National Trust, but this may reflect the Crown Immunity enjoyed by the former with respect to buildings it holds in guardianship on behalf of the Secretary of State. Buildings of which English Heritage is the freeholder other than as guardian do not enjoy Crown Immunity from planning legislation and these appear to be excluded by the interpretation of Part 26.

ISSUES

- 30.5 No local authority or any other responding organisation raised any concern with respect to this part of the GPDO. Only 30% of responding local authorities expressed any view on how well defined these rights are, with 93% viewing them as about right, none considering these rights too strictly defined, and only 7% considering them too loosely defined but with no specific concerns raised. No other organisation other than English Heritage expressed any view on these rights, while English Heritage itself indicated that these rights did not give rise to any problems.

- 30.6 However, it appears that English Heritage make only very limited use of these rights, perhaps reflecting the limited benefits arising from them. Maintenance and repair of buildings, including listed buildings, is not normally development requiring specific permission or consent. The term '*restoration*' is unclear but it is not English Heritage's normal policy in any event to restore a building to its original condition. Not having to submit a planning application for works to stabilise ground conditions of buildings, on the basis that this is an engineering operation, may be a benefit if the work was required urgently but it is understood that such situations arise only rarely. The ability to erect temporary screens/covers to protect buildings may be useful where works are needed in an emergency but it is again arguable that this either does not constitute development or is covered by Part 4 permitted development rights.

SCOPE FOR CHANGE

- 30.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 26 and discussed below.
- 30.8 These rights generally support policy aims to conserve the built heritage, and as they only apply to English Heritage and a limited number of buildings, there are no obvious policy conflicts likely to arise.
- 30.9 The development permitted in this Part is unlikely to give rise to material planning issues, with no indication that it is causing any problems and there are no pressures to amend it. It is also relatively simple to understand. There is no obvious case for more restrictions on these rights and no calls to widen them.
- 30.10 On the other hand, it is understood that English Heritage makes very limited use of most of these rights and, informally, did not have strong views on the need to retain them. The ability to erect temporary screens/covers to protect buildings may be useful where works are needed in an emergency but probably falls under Part 4 works. Overall, these rights appear to provide quite limited benefit to the planning system or the beneficiary. Their only obvious purpose would be to enable any urgent development or engineering works, on the rare occasions these are required.
- 30.11 On this basis, following consultation with English Heritage, consideration could be given to removal of this Part to assist in reducing the length of the GPDO and so help in simplifying use of it. If this Part is to be retained, the permitted development rights should be limited to works required to stabilise ground conditions of buildings.
- 30.12 The only change recommended is, subject to consultation with English Heritage, to remove Part 26 rights.**

Table 26: Assessment of recommendations for change to Part 26 of the GPDO

Proposed changes to Part 26: Development by Historic Buildings and Monuments Commission	Impacts on development policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	✓ support heritage aims.	– Generate no planning applications for often minor works but no. of times used is very small.	– could help avoid delays/costs for minor works but rights rarely used and some works are not development.	– could potentially help maintain heritage buildings but little used.	Broadly support policy aims and cause no reported adverse effects but rights are apparently little used or needed.
1. Remove Part 26 rights.	– could be seen as conflict with heritage aims but little used.	– would not produce any significant change in numbers of planning applications as rights rarely used now.	X removing current rights gives perception of increased regulatory burden.	– no impacts as rights rarely used now.	Although no significant benefits to affected interests, the absence of any adverse effects of change combined with reducing length of the GPDO supports removal of unused Parts. Change recommended.

✓ indicates positive impact from ✓ (low) to ✓✓✓ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 31

Part 27: Use by members of certain recreational organisations

- 31.1 This Part permits the use of land and the erection of tents by members of certain recreational organisations for the purposes of recreation or instruction, unless the land in question is a building or within the curtilage of a dwelling-house. No specific restrictions apply in designated areas.
- 31.2 Part 27 originated in 1948, its purpose being explained at the time as to allow well-known organisations with camping among their activities to use land and erect/place tents or caravans on it for these purposes without time limit, with the safeguard being that these organisations lay down strict codes of rules for their members.²² The parties involved considered that the 28 day temporary use rights under Part 4 were inadequate for their needs.
- 31.3 The organisations to which this right applies are only those holding a certificate of exemption under Section 269 of the Public Health Act 1936. As at 1995, this right applied to the Boys Brigade, the Scout Association, the Girl Guides Association, the Salvation Army, the Church Lads and the Church Girls Brigade, the National Council of YMCAs; the Army Cadet Force Association, the Caravan Club, the Camping and Caravanning Club and the London Union of Youth Clubs.
- 31.4 The extent of usage of these rights is illustrated by a group such as the Girl Guides, for whom tented camping on dedicated campsites or fields is a fundamental activity. The Guides have 700,000 members and 43,000 guide units nationally, each of which goes camping once or twice per year. As camping typically takes place at weekends and during the periods of school holidays, any limitation to 28 days per year (as applies under Part 4) would greatly restrict the group's activities.

ISSUES

- 31.5 Three local/National Parks but no other local planning authorities identified this Part of the GPDO as causing any problems. Of those authorities expressing a view on whether these rights were too restrictive or not, 85% considered them about right and 15% considered them too loosely defined. Further investigations with the authorities indicating that the rights were too loosely defined identified very few specific problems other than the need to restrict caravans under this Part. One case was raised where camping took place adjoining an SSSI and it was felt this use should be restricted in such sensitive locations.

²² Circular 9/95: General Development Order Consolidation, 1995.

- 31.6 Few responses were made by organisations representing users of such rights or other interest groups. These did not identify any significant problems with the current operation of Part 27. They also supported retention of the current rights, arguing that it was unreasonable to expect what are often voluntary organisations with limited resources to have to seek planning permission every time they wished to hold an event and it was unreasonable to expect the landowners to seek planning permission for this. One interest group called for updating of the list of specified groups since this currently excludes camping by religious or other groups over weekend periods.
- 31.7 Some recreational groups indicated that they have to keep a caravan on campsites for security reasons; this requires a separate application under the Caravan Sites Act, but is not understood to cause problems.
- 31.8 There is some overlap between this Part and the rights given to caravans under Part 5. The list of organisations allowed to use Part 27 includes some caravanning groups, which can involve significant numbers of caravans on land for short rallies.
- 31.9 No cases were identified of Article 4 Directions being used to restrict these rights.

SCOPE FOR CHANGE

- 31.10 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 27 and discussed below.
- 31.11 While encouraging recreation activities, these rights have some potential for conflict with aims to protect the countryside. However, development under Part 27 does not appear to be giving rise to widespread impacts and few specific problems were identified for it. Since these rights help avoid a large number of repetitive and largely uncontentious planning applications, there is no obvious reason to remove them and the absence of problems does not indicate that major change is needed.
- 31.12 The lack of restrictions within sensitive areas such as National Parks does not appear to cause problems or justify change. There is potential for harm if such activities take place in or beside nature conservation areas such as SSSIs although only one case was identified of this causing a problem. Although there is no evidence of a widespread problem, nature conservation bodies consulted felt that even one case of harm was too many and that nationally, or European, designated areas should be given appropriate protection and clear restrictions on permitted development that would help direct activities to less sensitive locations. While consideration could therefore be given to restricting Part 27 rights in such areas, this may be more appropriately dealt with through a general restriction in Article 3.
- 31.13 An apparent anomaly is the inclusion of caravanning organisations under Part 27. While these groups are understood to hold regular weekend rallies, Part 5 allows for these on caravan sites. Meetings by exempted groups under 5 days in length are not controlled by the Caravans Act and no licence is needed for camp sites if used for less than 42 consecutive days or under 60 days overall in any year.

- 31.14 If this apparent ability to utilise permitted development rights under more than one Part of the GPDO is considered to be inappropriate, there may be a case for reviewing the list of organisations that are able to use Part 27 rights, and specifying the eligible groups in the proposed GPDO User Guidance document. However, doing this by reviewing certificates of exemption under Section 269 of the Public Health Act does appear appropriate, since this exemption may well confer other benefits and the absence of any identified problems under Part 27 of the GPDO does not justify such action.
- 31.15 Activities under Part 27 have some similarities to Part 4 uses in that they are largely temporary in nature although with a lower likelihood of impact than some Part 4 uses such as car boot sales. As some recreational groups' camps operate throughout the summer, they may also require more than the 28 days allowed by Part 4. If it was felt useful to rationalise and reduce the length of the GPDO, there may be a case for including these rights as a separate Class within Part 4 but with no limit on the period of usage.
- 31.16 Overall, **no changes are proposed to this Part** but an up to date list of relevant groups should be provided in the GPDO User Guidance document.

Table 27: Assessment of recommendations for change to Part 27 of the GPDO

Proposed changes to Part 27: Use by members of certain recreational organisations	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Support social development aims.	√ Avoid need for many minor planning applications.	√ Avoid costs of repeated minor planning applications by some non profit groups. √ Avoids landowners preventing recreation use to avoid burden of making planning applications.	– limited potential for adverse impact on open countryside but largely temporary and no cases identified X potential for adverse impact on ecological areas although few cases identified.	Limited nature of rights and lack of concerns raised by affected bodies indicates no need for significant change.
1. Review List of Recreational Groups with regard to Caravanning Groups.	√ Would reduce apparent overlaps in GPDO making simpler to interpret. X change would require removal of group's exemption from S269 of Public Health Act with potential other drawbacks.	– no change in number of planning applications required if caravanning groups have alternative rights under Part 5.	– no change in number of planning applications required if caravanning groups have alternative rights under Part 5.	√ may improve perception of fairness of the GPDO.	Likely benefits and complexity of change do not support clear recommendation for amendment.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 32

Part 28: Development at amusement parks

- 32.1 This Part permits development on land used as an amusement park for the erection or extension of booths or stalls, and installation of plant or machinery in connection with the entertainment of the public there. Height limitations of 5 metres generally apply to booths and stalls, and 25 metres to plant or machinery. No additional restrictions apply in designated areas although a specific height limit applies within 3 Km of an aerodrome.
- 32.2 The nature of amusement parks and the fast changing, competitive leisure market in which they operate means that the structures and plant will frequently be replaced or altered to update facilities and maintain the attractiveness of the park; this can take place each season. The purpose of giving permitted development rights to amusement parks would therefore appear to be to reduce the number of minor planning applications within what would typically be a large, enclosed commercial area containing existing large structures; in these circumstances new development of no greater height could not be seen from the outside, and external impacts would therefore be minimal.
- 32.3 These permitted development rights are frequently used to erect or alter rides, small booths and stalls offering amusements. An amusement park could typically exercise these rights about 10-12 times p.a. but possibly much more when minor alterations are taken into account. Part 28 rights are generally accepted as applying to theme parks although this term is not used in the definition provided, and appeal cases have held that parks mainly exhibiting animals are excluded.

ISSUES

- 32.4 Some 31% of responding local authorities expressed a view on whether these rights are too restrictive or not. Of those, 86% considered them about right, 14% considered them too loosely defined and none as too restrictive. Only one local authority identified Part 28 as causing any specific problems. This concern related to the need for better definitions of certain terms such as '*enclosed land*' and '*stalls/booths*', the lack of which had led to disputes with operators seeking to include a take-away food stall as permitted development and to define additional land as part of the park by placing old railway sleepers around it to enclose it.
- 32.5 Discussions with other local authorities containing amusement parks indicated that permitted development rights have been removed by conditions on the original planning permission in some cases while there also appears to have been a number of disputes as to whether permanent buildings are allowed by Part 28. No cases were identified of Article 4 Directions being applied to Part 28 permitted development rights.

- 32.6 While only two operators of amusement parks responded, these covered a significant number of amusement or theme parks around the country, and both raised similar issues related to interpretation and definitions of terms. These respective respondents considered permitted development rights as fairly important and critical to their operations, while one had sought legal advice to confirm its ability to make use of Part 28 rights for certain works. The general areas of concern were:
- 32.7 the need for clearer definition of the term '*booths or stalls*' to confirm this includes permanent buildings, and that stalls can be occupied by ancillary retail or catering facilities within the park, on the basis that food and souvenirs are seen as an essential part of the amusement park experience. A suggestion was made to replace the term '*booths and stalls*' with '*buildings or structures*' within specified height and floorspace limits;
- The need for clearer interpretation of the term '*plant and machinery*' to confirm this includes not only rides but also stations and platforms for rides, their installation, necessary ground works and any structure which covers them and waiting users.
 - The need for clearer interpretation of the term '*enclosed area*' – ideally to mean the whole of the areas occupied by the amusement park.
 - A clearer definition of what the term '*amusement park*' covers, particularly to confirm that it includes themed leisure parks as well as traditional funfairs and seaside piers.

SCOPE FOR CHANGE

- 32.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 28 and discussed below.
- 32.8 These permitted development rights could be argued as broadly supporting policy aims for tourism and rural economies. While there is some potential for conflict with aims to protect the countryside and built heritage, this is limited by the rights being restricted to enclosed areas and by the height limitations that apply. The desirable outcome would be for these commercial leisure operations to be able to carry out regular upgrading of facilities without harming local amenity or the environment and, based on the consultation responses, this part of the GPDO is not giving rise to major concerns or material planning issues.
- 32.9 These rights also appear to be regularly used and perform a useful function by reducing the need to submit repetitive and largely uncontentious planning applications. On balance, therefore, Part 28 rights do not appear to be giving rise to any significant conflicts with Government policy aims. There is, therefore, no clear reason to remove these rights and no pressure for major changes to this Part.

32.10 However, there is scope to improve interpretation, by providing clearer definitions and guidance on the following matters:

- a. *'Amusement park'* – the interpretation within Class A defines this as an enclosed area of land, or any part of a seaside pier, which is principally used as a funfair or otherwise for the purposes of providing public entertainment by means of mechanical amusements and side shows. To avoid possible disputes, this interpretation should be amended to clarify that it applies to theme parks satisfying the same criteria, but not to wildlife parks or to zoos or to parks where the primary function is to exhibit animals.
- b. *'Enclosed area'* – this term is not specifically defined in the GPDO and can give rise to problems for parks not bounded by a fence or other defining enclosure. The above definition of amusement park is helpful by clarifying that only the part of the enclosed area commonly used for the specified public entertainment purposes is subject to permitted development rights. This limitation could be given greater emphasis by including it specifically within the interpretation.
- c. *'Booths or stalls'* – is interpreted in Part 28 as including *'buildings or structures similar to booths or stalls'* although there is no specific definition of these terms and no size limitations are given. This definition appears to confirm that a modest permanent building is covered by Part 28 rights but the definition or interpretation should be amended to make this explicit but with more specific limitation on the floorspace of buildings permitted.

This term can also be interpreted as excluding small buildings to be used for selling hot take-away food when such a use would be ancillary to, but not directly used in connection with, the entertainment of the public. There is similar scope for dispute on whether small retail uses within stalls are covered by Part 28. Such uses appear a normal part of amusement park activity and should not give rise to material issues if small scale and purely ancillary to the activity of the park. However, conflicts with policy aims could arise for out-of-centre catering or retail uses that are accessible to the general public rather than only visitors to the park. On balance, it is considered that the interpretation could allow for such uses in booths/stalls, subject to them being purely ancillary, not available to the general public and within suitable size limitations.

- d. *'Plant'* is defined under Article 1 as *'a structure or erection in the nature of plant'* while *'machinery'* is defined similarly. Both terms appear to be commonly interpreted as including rides and there is no obvious reason why they should not also include platforms for rides or covers for users etc. This should be clarified in the interpretation of this Part.

32.11 Although potentially high structures can arise, there are few, if any, amusement parks in AONBs or National Parks and no cases of adverse impacts were found. No justification was therefore made for imposing additional restrictions for Part 28 development in Article 1(5) or 1(6) land.

- 32.12 There is some inconsistency with other parts of the GPDO, since the height of plant or machinery allowed under these rights is restricted to 25 metres or the height of the highest existing structure within 3 Km. of an aerodrome. In contrast, Parts 6 and 7 limit the height of agricultural and forestry buildings to 3 metres within 3 Km. of an aerodrome. Since the Part 28 limitation reflects the height of established structures, there would be no worsening of safety and this difference is considered acceptable.
- 32.13 **No specific recommendations for change are made to this Part.** However, consideration could be given to amended interpretation to clarify that Part 28 includes theme parks, that booths and stalls can include hot food sales and that *'plant'* can include platforms for rides or covers for users.

Table 28: Assessment of recommendations for change to Part 28 of GPDO

Proposed changes to Part 28: Development policy aims at amusement parks	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	<p>√ Broadly support policy aims for tourism and rural economies.</p> <p>X some potential for adverse impacts on open and sensitive areas although controlled partly by size limits and restriction to enclosed areas.</p>	<p>√ reduce numbers of planning applications for repeated minor works but only for a few authorities and possibly under 10 pa. for each authority.</p>	<p>√√ Helps reduce numbers of planning applications for repeated operations and associated delays and costs.</p>	<p>X large structures have some potential for adverse impacts on open and sensitive areas. However, no cases of harm identified and would be controlled by size and enclosed area restrictions.</p>	<p>Limited adverse effects generally outweighed by benefits of keeping repeated daily operations out of planning control.</p>
Interpret booths/stalls as including hot food stalls.	<p>X some potential for adverse impacts on town centres retailing.</p>	<p>√ minimal reduction in numbers of planning applications for a few LPAs.</p>	<p>√ improves flexibility and reduces need for planning applications for minor developments with associated delays and costs.</p>	<p>X some potential for adverse impacts on town centre retailers but no cases of harm found.</p>	<p>Small benefits for users balanced by potential for impacts on town centres in a few cases. Change could be considered if workable limitations can be defined on size and number of outlets and access to park visitors only.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 33

Part 29: Driver Information Systems

- 33.1 Part 29 allows for the installation, alteration or replacement of apparatus by, or on behalf of, a driver information system operator, subject to area and height limitations and the number of microwave antennas on a building or structure. As for Parts 24 and 25, any system apparatus has to be sited to minimise its effect and to be removed when no longer needed. However, no specific restrictions apply in designated sensitive areas such as Article 1(5) or 1(6) land.
- 33.2 Driver information systems allow information on traffic conditions on the road network to be transmitted into receivers within cars. The most visible equipment in public areas comprises tall poles with camera-like structures on top of them along the sides of highways. These structures are mainly placed along more important routes and it is understood that much of the infrastructure required by the main operator of these systems is already in place, although it is possible that increased coverage of the country or the emergence of another operator could require additional installations.

ISSUES

- 33.3 Some 18% of responding local authorities indicated that Part 29 rights caused them some problems or adverse effects while 31% indicated some difficulties in interpreting this Part, perhaps partly because it is less clear what types of development it permits. No responses were received on this Part from any users or interest groups.
- 33.4 Only 19% of responding planning authorities expressed any view on whether Part 29 rights were too restrictive or otherwise. Of those, 95% considered them about right, and only 5% as too loosely defined, none indicating that they are too restrictive. The main concern identified, by a few planning authorities, was the impact of the coloured poles in sensitive areas including National Parks, AONBs and conservation areas. No cases were found of Article 4 Directions being used to restrict these rights.
- 33.5 Discussions with the main provider of such systems indicated no problems with using Part 29 rights and that concerns had been raised by planning authorities in only a very few cases. While installation of this operator's infrastructure is now complete, it is understood other operators may wish to install systems in future.

SCOPE FOR CHANGE

- 33.6 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 29 and discussed below.
- 33.7 In terms of impact, this form of development has some similarities with lamp standards erected under Part 13 by local highway authorities, although driver information poles appear less frequently spaced, lower and less obtrusive than the latter. These rights broadly support Government aims to use new technology to improve traffic flow, so reducing traffic congestion and improving highway safety, but have some potential for conflict with aims to protect the countryside and sensitive landscape areas. For the most part, Part 29 development does not appear to give rise to material planning issues although some concerns on impacts in sensitive landscape areas have been identified.
- 33.8 Subject to adequate controls and limitations being in place, the retention of these permitted development rights appears justified. The specified size limitations provide some control and the 15 metre height limit is consistent with other Parts of the GPDO. Although there are no reports of widespread problems, visual impact concerns were raised within one National Park (See Case Study 13, Annexe 7). Additional controls within sensitive areas may be appropriate to avoid impacts, particularly if this approach is being applied consistently across the GPDO. This could take the form of a prior approval requirement within National Parks and AONBs. Consideration was also given to a similar restriction in conservation areas but this change was not supported by any indications of harm.
- 33.9 The implication of this change would be an increased number of repetitive applications for local authorities but the numbers may not be large unless a significant change in the level of coverage is planned in future. This change is considered to be justified by the improved protection for sensitive landscape areas.
- 33.10 **Overall, the only recommended change is to require prior approval for new masts/poles in AONBs and National Parks.**

Table 29: Assessment of recommendations for change to GPDO

Proposed changes to Part 29: Driver Information Systems	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Broadly support transport aims to reduce traffic congestion.	√√ Generate no planning applications for large number of individual sites. X very limited scope for control in sensitive areas.	√ would help avoid delays/costs in any future extension of coverage.	X give rise to some adverse visual impacts in sensitive areas although few cases noted.	Help minimise no. of applications for numerous generally uncontentious sites but limited control for more sensitive areas.
1. Require prior approval for poles within sensitive landscape areas.	√√ Supports protection of sensitive landscape and built heritage. X some conflict with aims to reduce traffic congestion.	X Moderate increase in no. of prior approval determinations for some individual authorities in AONBs and National Parks depending on extent of future coverage. XX if restriction applied in conservation areas could produce significant increase in local authority workload.	X Perception of increased regulatory burden. X Potential delays for any increased coverage but only in some locations.	√√ Protection of countryside, sensitive landscape and conservation areas. X possible delays to increased driver information coverage.	Net positive contribution to policy aims and affected parties outweighs potential impacts on users and local authorities. Change recommended. But confined to sensitive landscape areas rather than all Article 1(5) land.

√ indicates positive impact from √ (low) to √√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 34

Part 30: Toll road facilities

- 34.1 Part 30 permits the setting up of toll collection facilities and the provision of ancillary hard surfaces for parking use. Development is permitted subject to certain distance, height and floorspace requirements and, within Article 1(5) land is subject to a prior approval procedure relating to siting, design and external appearance. A building height limit of 7.5 metres applies (or 10 metres for a rooftop structure).
- 34.2 This Part was introduced following the New Roads and Street Works Act 1991, which made provision for the construction of toll roads. These rights do not apply to any infrastructure required for town centre traffic congestion charging initiatives, which could potentially be covered by Part 13 but appear to be dealt with through other legislation, such as the Greater London Authority Act 1999.
- 34.3 The potential users of Part 30 rights fall into two main categories:
- Larger toll road or crossing operators involving public roads and established under Acts of Parliament, including the Severn Crossing, Humber Bridge, Dartford Crossing, Mersey Tunnel and Tyne Tunnel and, once completed, the Midland Expressway toll road.
 - Smaller toll roads over private land, often for historic reasons and some established by Royal Charter; an example is a toll road through Dulwich College-owned land in London.
- 34.4 From consultation responses, it is understood that the larger toll road operators make only limited use of Part 30 rights. This is because most of the larger toll facilities were established under specific Acts of Parliament (e.g. the Dartford Crossing Act 1987), which confers the right to carry out specific operational development without the need for planning permission. In addition, some facilities such as the Mersey Tunnel are listed structures where any development would require listed building consent in any event. Part 11 permitted development rights may also be applicable in some of these cases.

ISSUES

- 34.5 Toll roads exist in relatively few parts of the country. Only 1% of the responding local authorities indicated that Part 30 caused them any problems or adverse effects and the same low proportion indicated any difficulties in interpreting this Part. Some 19% of responding planning authorities expressed a view on whether Part 30 rights were too restrictive or otherwise. Of those, 96% considered them about right, and only 4% as too loosely defined. It was not possible to identify any specific concern or examples of adverse effects.

- 34.6 No interest groups raised any concern on these rights and no cases were identified of Article 4 Directions being used to remove permitted development rights for works under Part 30, nor any case of EIA being required for such development.

SCOPE FOR CHANGE

- 34.7 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 30 and discussed below.
- 34.8 When these rights were introduced, it may have been envisaged that a significant number of new toll roads would be developed. However, provision of new toll roads does not appear to be a specific Government policy aim at present. The only new facility is the Midland Expressway road around Birmingham and Government announcements in recent years suggest that no further developments of this type are currently anticipated. Retention of these rights would not, therefore, appear to support any particular Government policy aims. There is some potential for conflict with aims to protect countryside and built heritage although this must be limited given the relatively minor types of development permitted, the size limitations and the need for prior approval in Article 1(5) land.
- 34.9 Part 30 permitted development rights can be considered as enabling works related to public transport infrastructure although it is not clear that such works are required urgently or would otherwise involve large numbers of planning applications. At the same time, there is no indication that Part 30 rights are giving rise to any material planning problems and no pressure for change from local authorities or environmental interest groups. However, there also appears to be very limited usage of these rights and the number of developments that could potentially apply to them also appears small.
- 34.10 It is not clear that Part 30 provides any benefits for the larger toll road operators since Part 11 enables development specified under relevant Acts of Parliament. They may, however, facilitate some works that are not specifically permitted by other legislation. While there is also a number of small, private toll road operations around the country, it is difficult to envisage that these would give rise to a significant number of developments in future.
- 34.11 Based on the above factors, the case for retaining these rights does not appear strong. Consideration should therefore be given, after consultation with operators, to removing Part 30 rights unless it is anticipated that development of more toll roads will be promoted in future and that this will not be under legislation that specifically enables such works to be carried out. Given the limited number of facilities to which Part 30 applies, removal of these rights appears unlikely to give rise to a significant increase in local authority workloads.
- 34.12 **The only change recommended is to remove Part 30 rights, but subject to consultation with toll road operators and to any anticipated future Government policy aims to expand toll roads.**

Table 30: Assessment of recommendations for change to part 30 of the GPDO

Proposed changes to Part 30: Toll road facilities	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Indirectly support transport aims to reduce traffic congestion and improve transport infrastructure.	√ Generate no planning applications although toll roads exist in few districts.	– help avoid delays/costs in minor facilities but rarely used as some facilities are listed or do not require planning permission under enabling Act of Parliament.	– very few toll roads exist. – adverse impacts in sensitive areas controlled by prior approval.	Cause no reported adverse effects but rights are apparently little used.
1. Remove Part 30 rights for Toll Road facilities.	X minor conflict with aims to reduce traffic congestion and improve transport infrastructure.	– would not produce any significant increase in numbers of planning applications for individual authorities.	X Perception of increased regulatory burden.	– very few toll roads exist. – adverse impacts in sensitive areas already controlled by prior approval.	Although no substantial benefits to affected interests, the limited adverse effects of change combined with reducing length of the GPDO supports removal of unused Parts. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 35

Part 31: Demolition of buildings

- 35.1 These rights were introduced to address a previous absence of planning control over demolition. Although Section 55 of the 1990 Act defines demolition within the meaning of development as a building operation, the Secretary of State may also direct that the demolition of certain categories of building does not constitute development. The current Demolition Direction is at Appendix A of Circular 10/95, *Planning Controls over Demolition*, and excludes from the definition of development the demolition of various buildings, including buildings which are listed, in conservation areas, under 50 m³ capacity, fences/enclosures outside conservation areas and any other building except a dwelling-house or one adjoining a dwelling-house.
- 35.2 Since most demolition is therefore not development, Part 31 itself permits demolition of a very limited range of buildings – dwelling-houses, building adjoining them, and walls, fences and other means of enclosure in conservation areas – and, for the buildings only, it exerts control only over the means of demolition through a prior approval procedure.
- 35.3 Class A permits the demolition of a building, except where it has been rendered unsafe or otherwise uninhabitable, or it is practicable to secure temporary support. A written justification of the demolition, where urgently necessary, is required from the developer ‘*as soon as reasonably practicable*’. Otherwise, except for ‘*excluded demolition*’ (where planning permission for redevelopment has been granted) a prior notification procedure has to be followed, with a 28 day expiry period applying.
- 35.4 Class B permits demolition of the whole or part of any gate, fence, wall or other means of enclosure; this only applies to conservation areas since demolition of walls etc. elsewhere is not development.

ISSUES

- 35.5 Some 18% of responding local authorities indicated that Part 31 caused them some problems or adverse effects while 31% indicated difficulties in interpreting this Part. Some 57% of responding planning authorities expressed a view on whether Part 31 rights were too restrictive or otherwise. Of those, 61% considered them about right, 31% as too loosely defined, and only 8% indicated they were too restrictive. The main concerns identified were:
- removal of front garden walls to allow parking of cars, which causes adverse effects on the character of streets, particularly in conservation areas;
 - the need for changes to achieve the level of control over demolition in conservation areas that applied prior to the *Shimizu* judgement;

- lack of control of demolition of locally important but unlisted buildings outside conservation areas, which developers can demolish to increase pressure on a local authority to allow a redevelopment scheme;
 - the prior approval procedure for demolition is seen as difficult for the public to understand;
 - perceived inconsistency with Section 269 of the 1990 Planning Act and other legislation which allows demolition of buildings where detrimental to amenity; and
 - the unnecessary control over means of demolition, which is required under the Building Acts in any event.
- 35.6 A significant number of responses (under 10 individual responses) from conservation interest groups emphasised the need to prevent demolition of locally important but unlisted buildings outside conservation areas. However, one response was linked to a national campaign to change legislation on this issue – the Saint William of York Deposition – and included representations of support for such a change from over 200 other organisations, including conservation bodies, local authorities and other interest groups.
- 35.7 A number of cases were identified where developers had removed such buildings in advance of any planning permission in order to increase pressure on the local authority to allow new development rather than have an unsightly vacant site. This not only resulted in the loss of locally important (often locally listed) buildings but often left unsightly vacant sites for lengthy periods. National interest groups reported this to be a widespread problem, with every authority having 1 or 2 such cases annually. The remedy suggested was to make a wider range of buildings subject to demolition control and then make the permitted development rights for demolition conditional on planning permission having been granted for a replacement building and a contract for its construction having been let.
- 35.8 Other issues raised by interest groups included:
- Class B should be deleted to prevent adverse impacts from the removal of front garden walls;
 - the lack of control on demolition of sports facilities reduces sports provision; and
 - demolition generally should be brought within planning control.
- 35.9 Reflecting some of the concerns identified above and the need to address the problems arising from the *Shimizu* judgement²³, in June 2000 the Government consulted on proposed changes to planning legislation affecting demolition and in March 2001 announced that it proposed to amend legislation in order to require planning applications for the demolition of a boundary wall, gate, fence and other means of enclosure, and chimneys or porches on dwelling-houses within conservation areas.

23 House of Lords Judgement: Shimizu (UK) Ltd. V Westminster City Council, 1997.

- 35.10 The proposed extent of these changes reflected the Government's aim that any change to householder permitted development rights should be the minimum necessary to achieve the objective of protecting conservation interests and that the alternative of requiring Article 4 Directions to achieve this aim would be burdensome for local authorities.
- 35.11 In addition, a Government consultation paper in July 2000 proposed changes to the GPDO and the 1995 Demolition Direction to bring the demolition of buildings used for sporting purposes within the definition of development, and to extend permitted development rights to allow their demolition but only where planning permission had been granted for redevelopment of the building. In September 2001, the Government announced that it proposed to amend legislation so that a planning application would in future be required for the demolition of buildings used for sporting purposes and for essential ancillary purposes, where no planning permission exists for the redevelopment of the site. Neither of these proposed changes has been implemented.

SCOPE FOR CHANGE

- 35.12 An assessment of the benefits and deficiencies of the current rights under this Part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 31 and discussed below.
- 35.13 While originally introduced, inter alia, to prevent abuses of residential amenity and residential tenants, these rights can conflict with policy aims to protect the quality of the built environment by enabling demolition of important elements of local townscape and leaving unsightly gaps and, from the consultation responses, give rise to adverse impacts. Demolition of potentially re-usable buildings is not sustainable since large amounts of embodied energy in the historic fabric are lost.²⁴

Important Buildings outside Conservation Areas

- 35.14 From several case studies examined, the current situation has not been able to prevent loss of locally important buildings outside conservation areas, including some on local lists (Case Study 9, Annexe 7). This has resulted from factors such as the increasing pressure from Government policy on brownfield sites and for higher density development, as well as the differential VAT treatment of conversion and redevelopment; the impacts of these demolitions have included:
- the loss of interesting buildings which form local landmarks and reflect the history of a community;
 - the loss of social facilities, or buildings which could be re-used for such purposes;
 - the creation of unsightly gaps which blight an area;
 - the loss of buildings which could one day achieve statutory listing as criteria change.

²⁴ State of Historic Environment, English Heritage, 2002.

- 35.15 The desirable outcome in this case would be to enable control over demolition to a sufficient degree to protect the character and built heritage of areas without giving rise to a large number of unnecessary planning applications. In addition, an amendment to control demolition of all buildings outside conservation areas would offer important benefits in situations where other potential forms of control (e.g. listing or designating new conservation areas) have been ineffective in terms of urgent action. This change would allow control, or time to consider listing, of all types of locally important buildings. This change to permitted development rights would not in itself be sufficient to prevent the loss of important buildings, but could prevent vacant sites. To also protect the building, it would need to be included on a local list with a protective policy for such buildings included in the development plan.

Case Study 9:

The Hatherley School in Cheltenham, designed by one of the city's main architects, formed a local landmark and one of few historic buildings left in this average residential area. It was demolished after applications for residential development were rejected and attempts to obtain statutory listing failed. It lay outside a conservation area and attempts at local listing were too late. Results have been an unsightly gap for 18 months, with suggestions of blight, and the loss of a local link with the past.

- 35.16 It is recognised that there are general sustainability benefits in controlling demolition of all buildings, for example, to encourage re-use of built fabric and the energy embodied in its materials and construction. Combined with other controls, it could also reduce the period that sites remain vacant and encourage temporary uses of older buildings for longer periods. This approach would not necessarily lead to large increases in numbers of planning applications required, since in most cases demolition could be applied for as part of any proposal for redevelopment. It also has the advantage of not requiring local authority resources to identify in advance all specific buildings to be protected. However, this approach could introduce unnecessarily wide control over some demolition, including redundant buildings or cases where a building was to be demolished for a purpose not requiring planning permission.
- 35.17 In order that any change is not more onerous than it needs to be, consideration has been given to alternative, more targeted approaches, for example, applying additional control to only a limited number of buildings e.g. public buildings (including churches, schools, town halls) or only to locally listed buildings. However, consultation responses indicate that current demolition pressures are not restricted only to public buildings.
- 35.18 Extending demolition control only to locally listed buildings would target those buildings regarded as important, but relies on local lists being maintained by local planning authorities with limited resources, and a number of authorities do not have such lists and limited resources to prepare them. The legal position of linking permitted development rights to a non-statutory list would have to be clarified, unless the local list is given statutory status. Provided these issues can be resolved, this appears to be the most targeted way forward, and would encourage local planning authorities to maintain up to date local lists and provide supporting policies in their development plans if they wish to protect locally important buildings. In such cases, the same criteria would apply as proposed above. In summary, the change proposed would be to extend demolition control to apply to buildings identified on local lists by local planning authorities, and to make this permitted development

subject to planning permission for redevelopment having been granted and a contract for construction being let. This change would also require alteration to the Demolition Direction. Apart from those set out below, no changes are proposed to existing demolition controls on other types of buildings.

- 35.19 The implications of such a change should not be onerous. It should not necessarily give rise to a large number of additional planning applications for demolition, since those seeking redevelopment would need an application for the replacement building in any event and this could be combined with one for demolition. Separate applications for demolition should be deterred by the risk of refusal.

Sports Facility Buildings

- 35.20 In terms of supporting Government policy aims, it is considered appropriate to provide control over the demolition of sports facilities, broadly in the way proposed by the Government following consultation. However, a change to control all demolition, as discussed above, would avoid the need for a specific change in relation to sports facilities. If the more targeted approach to control locally listed buildings only is followed, a specific change is needed to restrict demolition of sports facilities in a way similar to that proposed by the Government's consultation. The change which is recommended here is somewhat more restrictive than this, by requiring both planning permission having been granted for redevelopment and a contract for its construction having been let. The latter requirement would encourage sports facilities to be retained for as long as possible until the site is required for development. This change would also require alteration to the Demolition Direction.

Front Garden Walls

- 35.21 Demolition of front garden walls to leave lengthy gaps for car parking and the loss of green areas harm the character of conservation areas and other areas, as well as reducing on-street parking. The problem arises to varying degrees across the country but mainly in inner city areas with parking pressures. Article 4(2) directions can be effectively used to control this in conservation areas, but in a few cases have been deterred by compensation concerns and no cases were found of these directions being used for this purpose outside conservation areas, largely due to resource problems (see Case Study 11, Annex 7). In order to support aims to improve the built environment, deletion of Class B is therefore proposed (as previously proposed by the Government).
- 35.22 This change would also avoid the need for Article 4 Directions and the compensation risk with them. The view of consultees was that this would not necessarily lead to a major, immediate increase in the number of planning applications, as such proposals tend to be incremental and infrequent, and refusals would gradually educate the public. However, a supporting policy in the development plan would be needed to resist subsequent planning applications or appeals for such demolition.
- 35.23 However, this will only provide control in conservation areas. The evidence of widespread problems outside such areas is less strong, largely because permitted development works such as this are not recorded and many local authorities' main focus in this regard is on conservation areas. However, investigations with local authorities indicate that the loss of front garden walls outside conservation areas is a problem for some inner city authorities. Where one or two adjoining properties remove front walls, this can cause an unsightly gap and begin to lower the general

character and quality of a street, and encourage others to follow. It does not appear unreasonable to seek to protect the quality of areas outside conservation areas in this way to avoid deteriorating residential environments.

- 35.24 A case is seen for amending the Demolition Direction in Circular 10/95 to make demolition of front garden walls generally fall within the definition of development; outside conservation areas, such demolition could then be permitted only where demolition, without replacement, of front walls and other means of enclosure to front gardens is proposed. However, there is insufficient evidence that this is a widespread and serious problem and, because many areas are not affected, this change may be more than necessary to address concerns. There are, however, many areas where this is not an issue and a risk of increasing numbers of planning applications for minor changes to walls that do not cause problems.
- 35.25 On balance, no recommendation for increased controls outside conservation areas is proposed, but should be considered after further investigation on the extent of the problem.

Post Shimizu changes

- 35.24 Based on consultation responses to Part 1 and Part 31 in particular, as well as responses to the changes proposed by the Government to address the consequences of the *Shimizu* Judgement, there is a clear case to adopt these types of changes and provide better control on partial demolition in conservation areas without the need for Article 4 Directions. This approach reflects that generally adopted in this study.
- 35.25 There were also calls during the consultation process for wider changes to permitted development rights in order to control any demolition in conservation areas above a small specified size, for example removal of an extension of a building, and control removal of a wider range of features than those proposed in the Government's preferred option for addressing *Shimizu*. The aim was partly to restore the pre-*Shimizu* situation in conservation areas by removing more permitted development rights for dwelling-houses particularly. This concern could be addressed by other means than changing permitted development rights, for example by requiring conservation area consent for all partial demolition through amendment to the definition of development in primary legislation. Consultation responses to Government consultation on *Shimizu* issues did not identify this aspect of demolition as the main concern. Moreover, the approach involving removal of all rights in conservation areas was not supported by the majority of consultation responses, would remove some rights unnecessarily and could give rise to a significant increase in minor planning applications. On this basis, a more targeted approach is endorsed by this study. However, consultation responses supported more control over additional features important to conservation areas than those preferred by the Government in its March 2001 consultation, particularly loss of projecting bay windows, original roof coverings, and replacement or original windows with UPVC substitutes.
- 35.28 The changes proposed to address *Shimizu* should therefore include those preferred in the March 2001 Government announcement but there is a strong case for extending the controlled features within conservation areas, as follows:
- Demolition of all or part of a boundary wall, gate, gate pier, railings, fence and other means of enclosure.

- Removal, without like-for-like replacement, of chimneys, porches and projecting bay windows on dwelling-houses within conservation areas; this is dealt with in Part 1 rather than Part 31.

35.29 These additional changes need not result in many additional planning applications as like-for-like replacement should not result in a material change in external appearance. To ensure consistency across the GPDO, the proposed redrafting of Part 1 should reflect these changes. Measures to address replacement UPVC windows are dealt with under Part 1. No change is proposed to control all demolition in conservation areas, or loss of extensions or outbuildings, since this appeared less of a problem than the other features identified above.

Simplification

35.30 There is also the general concern that the legislation relating to demolition is complex and requires reference to the 1990 Act, Circular 10/95 and the GPDO. To simplify this process, consideration should be given to making all demolition either permitted or not through the GPDO rather than for some development to be excluded from control by the Demolition Direction. This would mean removing one layer of control in the Demolition Direction, so that demolition of all buildings would then come within the definition of development, and the GPDO would then specify those types of buildings for which demolition was permitted development. As well as reducing complexity somewhat, this would appear to give greater flexibility for future changes in demolition control if needed.

Penalties

35.31 If the above proposals for greater control over demolition of important buildings are to be effective, stricter penalties are likely to be needed to avoid demolition taking place regardless to enable redevelopment. The normal planning enforcement regime may not be effective in achieving reinstatement once a building has been completely demolished. While this is beyond the scope of this study, consideration could be given to penalties similar to those applying to unauthorised demolition of statutory listed buildings.

35.32 The recommended changes to this Part are, therefore, to:

- **extend demolition control to apply to buildings identified on local lists and to make this permitted development subject to planning permission for redevelopment having been granted and a contract for construction being let;**
- **control demolition of sports facility buildings in a similar way to that for locally listed buildings; this reflects current Government proposals; and**
- **delete Class B to prevent whole or partial removal of a boundary wall, gate, gate pier, railings, fence and other means of enclosure within conservation areas; this reflects current Government proposals.**

35.33 Consideration could also be given to:

- removing from the Demolition Direction in Circular 10/95 the types of demolition specified to be development so that all types of demolition can be permitted or not through the GPDO; and
- outside conservation areas, changes to control demolition, without replacement, of front walls and other means of enclosure to front gardens.

Table 31: Assessment of recommendations for change to Part 31 of the GPDO

Proposed changes to Part 31: Demolition of buildings	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	XX conflict with heritage and urban character aims.	√ reduce numbers of planning applications for demolition where not part of redevelopment application.	√ avoids need for planning application delays for demolition that is not part of redevelopment application.	XXX allows loss of locally important unlisted buildings outside conservation areas, loss of sports facilities and loss of front garden walls harming urban character.	Impacts on heritage and urban character outweigh small benefits to users and moderate benefits to LPA workloads.
1. Control demolition of locally listed buildings.	<p>√√ Supports protection of historic environment.</p> <p>√ Supports sustainability by encouraging re-use of buildings.</p> <p>X Perception of increased regulatory burden.</p>	<p>X Need to maintain up to date local list.</p> <p>– Need policy in development plan to resist loss of locally listed buildings.</p> <p>– No significant increase in planning applications.</p>	<p>X Cannot demolish certain buildings in advance of permission for redevelopment.</p> <p>– No additional cost from seeking demolition consent along with permission to redevelop.</p> <p>– May encourage conversion rather than redevelopment.</p>	<p>√ Helps maintain character of local areas.</p> <p>√√ Reduce unsightly vacant sites for lengthy periods.</p> <p>Change recommended.</p>	<p>Net positive contribution to policy aims and affected parties with limited adverse impacts on users and local authorities.</p> <p>Change recommended.</p>
2. Control demolition of sports facility buildings.	√√√ Supports aims to improve recreation/sport.	X Small increase in planning applications for individual LPAs, probably under 10 p.a.	X Need for separate application only if not part of overall redevelopment scheme but reduced flexibility for redundant minor buildings.	√√ Increased protection of recreational facilities and retention for as long as possible.	<p>Important benefits to recreation generally outweigh minor disadvantages for LPAs and users.</p> <p>Change recommended.</p>

Table 31: continued

Proposed changes to Part 31: Demolition of buildings	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
3. Control demolition of front garden walls.	<p>√√ Supports protection of urban character/heritage.</p> <p>√ Supports sustainability aims to reduce car parking.</p> <p>√ indirectly supports biodiversity aims.</p>	<p>XX possible moderate increase in no. of planning applications and enforcement action until users educated to new regime. Need for policy resisting loss of walls in development plan.</p>	<p>√ Protects character of local areas for residents.</p> <p>X restricts householder flexibility in property alterations.</p>	<p>√√√ Protects character of local areas.</p>	<p>Important benefits to environment and policy aims outweigh moderate drawbacks for LPAS and users. Change recommended only for Conservation Areas but restrictions outside conservation areas should also be considered.</p>
4. Control removal of chimneys, bay windows, porches.	<p>√√ Supports protection of urban character/heritage.</p>	<p>X moderate increase in no. of planning applications as like for like replacement would not produce material change in external appearance.</p>	<p>√ √ Protects character of local areas for residents.</p> <p>X restricts householder flexibility in property alterations.</p>	<p>√√√ Protects character of conservation areas.</p>	<p>Important benefits to heritage aims outweigh moderate drawbacks for LPAS and users.</p> <p>Change recommended.</p>

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 36

Part 32: Schools, colleges, universities and hospitals

- 36.1 This Part permits development of buildings for use as part of, or incidental to a school, college, university or hospital. This is subject to limitations on cumulative floorspace and cubic content, to no building being erected within 20 metres of the site boundary, and to development not preventing the use of existing playing field land. The only condition imposed is that materials should be *'of a similar appearance'* to those used for the original building. No special restrictions apply in designated areas.
- 36.2 Introduced in 1995, these rights extended those available for local authority schools under Part 12 to other schools, as well as to other certain institutional facilities typically occupying large sites. Their introduction for colleges and universities reflected anticipated rapid expansion of the sector at that time, with a need for frequent minor developments within a campus.
- 36.3 These rights are thus available to a range of different organisations, such as local education authorities, independent schools, universities and national health trusts. The scale of development allowed by these rights is relatively small, limited to a cumulative 10% floorspace increase and a volume increase of 250 m³ on the original building as well as by distance from site boundaries.

ISSUES

- 36.4 Some 14% of responding local authorities indicated that Part 32 caused them some problems while 15% indicated any difficulties in interpreting this Part. However, of those local authorities giving a view, 80% considered these rights to be about right, only 9% as too loosely defined, and 11% as too restrictive. The only specific response from a local authority considered that extension rights for schools should be allowed to die out as the limits were reached in order to avoid further development in Green Belts.
- 36.5 No cases were identified of Article 4 Directions being used to remove permitted development rights for Part 32 activities.
- 36.6 The use of Part 32 rights varied between the different groups to which they apply. There appeared only limited use of these rights by hospitals and universities. In some cases, those consulted were unaware of the rights available, while for others it was normal practice to submit planning applications for all works, particularly since most such development would exceed the Part 32 limitations. Other users indicated that the small building limits had long ago been used up. Allowing this limit every 10 years, for example, would be better but not much more useful unless the limit

was significantly expanded; a body representing universities called for a limit of 1,000 m³ if these rights were to be useful. Having a limitation based on a cumulative volume also appeared a particular deterrent to health bodies, since calculating and keeping track of this allowance can be difficult for large hospitals where small developments are continually taking place.

- 36.7 In contrast, Part 32 rights are exercised frequently by local education authorities for small buildings at schools, such as cycle sheds, storage sheds and occasionally extra classrooms. Some authorities saw Part 32 rights as more useful to schools than Part 12 because of the larger volume limit and because Part 12 allows only ancillary buildings, which could be interpreted as excluding classrooms.
- 36.8 While Part 32 rights were generally seen as working reasonably well by those who did use them, a number of specific concerns were identified:
- There are several areas where clarification or better definitions are needed e.g. to clarify that enlargement of a school is not confined to free standing building and can include an extension.
 - There is a need to make clear that size limits on extensions apply only to the original buildings, not the building after it has been enlarged (although this does appear clear from the interpretation).
 - Basing the extension rights on cumulative cubic capacity, which can be difficult to calculate, makes it very difficult to identify what rights remain and can require a cumbersome recording process of every small development.
 - There is an issue of consistency with Part 12, which allows extensions to schools within a 200 m³ volume limit but otherwise with fewer restrictions, giving local authorities a choice of which Part to use. While some authorities make use of the most advantageous Part, the view of others was that temporary classrooms should not be permitted development given their size, visual intrusion and scope to affect adjoining residential properties.
 - The restriction that new buildings should be at least 20 metres from any boundary was seen as important in preventing over-development of school sites by some authorities but over-restrictive by others since it would severely constrain extensions under permitted development at small village schools.
 - No definition is given for *'playing field'* in the GPDO itself, and if that given in the 1995 General Development Procedure Order is used, it could be interpreted as excluding use of these rights at all schools with at least one playing pitch.
- 36.9 No significant issues on Part 32 rights were raised by other organisations or interest groups.

SCOPE FOR CHANGE

- 36.10 An assessment of the benefits and deficiencies of the current rights under this part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 32 and discussed below.

- 36.11 These rights broadly support Government policy aims for health and education, while any potential conflicts with aims to protect the countryside and built environment and to improve design quality are limited by the tight size and distance limitations that apply.
- 36.12 For the most part, these rights do not appear to be giving rise to material planning issues and are similar in some ways to the rights enjoyed by local authorities by providing for essential infrastructure for public use. While the organisations able to exercise these rights are not necessarily public bodies, the specified limitations appear to provide adequate control against adverse impacts. There is therefore no reason to remove or greatly reduce these rights on the basis of their impacts of policy conflicts but some changes have been considered to address other issues raised.
- 36.13 The overlap and inconsistency between Part 12 and Part 32 for school development causes confusion and should be resolved in line with the aim of limiting a choice between Parts. This could be dealt with by introducing a new Part dealing with school development only and removing rights for school development from existing Parts. If this were done, the 250 m³ limitation on buildings from Part 32 appears more appropriate than the Part 12 limit but combined with the restriction on development within 20 m of the site boundary. The cumulative volume restriction of Part 32 is cumbersome and should not be included in the new Part given that there is no such restriction on most schools provided by Part 12 at present. Using floorspace rather than volume as the control would be more consistent with the approach proposed for other Parts but the scale and nature of the buildings involved here makes this less important here. The current volume, height and distance from boundary limits appear adequate for controlling over-development. The 20 metre distance limit from the site boundary does not appear excessive to avoid impacts on residential premises but could be reviewed if found to be a severe restriction on smaller school sites.
- 36.14 Although limited use is made of Part 32 rights by hospitals and universities, users indicate they can be helpful for some smaller developments such as cycle sheds. The main constraint is the small size limits, which are too small for many potential facilities and used up forever by a single building. Over time, these rights will effectively disappear as the cumulative limit is exhausted. Several cases were identified where universities faced delays in obtaining planning permission for uncontentious but urgently needed research office or laboratory accommodation of little more than 250 m³ in the middle of large campuses. Several bodies saw Part 32 rights as potentially useful for temporary accommodation, which would be erected and removed over time to meet changing needs.
- 36.15 It would be inconsistent for these uses not to have such rights when schools enjoy them. With the current size limits, it is questionable whether there is significant benefit in retaining these rights for universities and hospitals. However, users argue that raising the limit to say 1,000 m³ would make them more useful, and such widening of rights appears appropriate and with suitable limitations unlikely to give rise to adverse effects. Given that the existing distance and other controls currently applying would be retained, no significant impacts are anticipated from this change, other than a modest reduction in planning applications. However, limiting this increased size limit within conservation areas would help avoid impacts in more sensitive locations. A floorspace based limit (say 300 m²) would be more consistent

with the approach proposed in other Parts, and acceptable as long as new buildings were no higher than the original and the limit of a 10% increase over the original floorspace is maintained.

- 36.16 If these rights are to be retained, this should be in a separate Part relating to universities, colleges and hospitals, with the same limitations as now apply to Part 32, other than the increased size limit as proposed above. To avoid uncertainty, the new Part for *'School Development'* should clarify that the permitted development rights apply to both new extensions and free-standing buildings.
- 36.17 With regard to playing fields, the definition of *'playing field'* in the 1995 General Development Procedure Order (as amended) is *'...the whole of a site which encompasses at least one playing pitch'*; *'playing pitch'* is defined as meaning a delineated area of 0.4 ha. or more used for various specified team sports. This could conceivably be interpreted as restricting permitted development rights on the whole school or university site and a definition should be provided in the GPDO to avoid this; the definition given above for *'playing pitch'* appears a more appropriate one to use in this case.
- 36.18 In summary, the principal recommended changes to this Part are, therefore:
- **relocate school-related development from Part 32 to a new Part of the GPDO dealing specifically with schools;**
 - **increase size limits of buildings within university, college and hospital sites to 300 m² by floorspace (or 1,000 m³ by volume) subject to a limit of 10% of the original floorspace, a specified distance from site boundaries and not within conservation areas; and**
 - **amend the interpretation of playing fields in this Part.**

Table 32: Assessment of recommendations for change to Part 32 of the GPDO

Proposed changes to Part 32: Schools, universities, colleges, hospitals	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Support education/social development aims.	√ Avoid need for many minor planning applications.	√ Avoid delays from many minor planning applications. √ Choice of Part 12 or 32 for school extensions. X Size limits seen as too small to be useful and used up quickly.	- Any adverse impacts controlled by size/distance limitations.	Lack of concerns raised by affected bodies and limitations in place indicates no need for major change.
1. Create separate part for Schools.				√√ Would reduce scope for adverse impact on character of areas.	Modest benefits to streetscape/urban quality outweigh potential for small increase in planning applications. Change recommended.
2. Increase size limit of extensions to 1,000 cu. m.	√ Support for education/social development aims.	√ Avoids need for small number of minor planning applications e.g. 1-2 per LPA per annum.	√ Avoids delays for small number of planning applications e.g. 1-2 per LPA per annum.	X Greater potential for adverse impacts on adjoining uses/areas but controlled by distance limits.	Limited benefits balanced by some potential for adverse effects. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 37

Part 33: Closed circuit television

- 37.1 Added in 1995, this Part permits the installation, alteration or replacement on a building of closed circuit television cameras (CCTV) used for security purposes. These rights do not apply if the building is listed or a scheduled monument, if the cameras exceed specified size (75 cm by 25 cm by 25 cm), height (not below 2.5 metres above ground) and spacing limitations, or there are more than 16 cameras on the building.
- 37.2 These rights are not specific to any type of development or user, and therefore apply to provision of CCTV cameras on shops, flats, houses and other buildings. The only conditions relate to minimising the effect on the external appearance of the building and removal *'as soon as reasonably practicable'* after the cameras are no longer required for security purposes. No special restrictions apply in designated areas.
- 37.3 An obvious purpose of CCTV installations has been security and crime reduction. Part 33 rights facilitate such aims without the need for planning applications for a large number of minor developments.

ISSUES

- 37.4 Although CCTV is now widely used, only 8% of responding local authorities indicated any difficulties interpreting or using Part 33, and only 6% noted this Part as one causing them any problems. Some 47% of planning authorities gave a view on whether Part 33 was too restrictive or otherwise. Of these, 84% considered Part 33 permitted development rights to be about right, 14% saw them as too loosely defined and only 3% saw them as too restrictive.
- 37.5 The main concerns stated by those local authorities considering Part 33 too loosely defined were the size and visual impact of cameras and the erosion of neighbours' privacy. One authority sought removal of Part 33 rights within conservation areas. Another sought clear interpretation of A.1(e) which limits the distance between a camera's points of contact on a building.
- 37.6 The main concerns of responding users of Part 33 were the restrictions on the number and spacing of cameras:
- The limitation to only four cameras on any one side of a building is considered too few for large, high security buildings.
 - The spacing requirement of 10 metres between cameras was seen as too small for some situations, especially near building entrances and for adjacent walls and courtyards.

- There is no provision for pole mounted cameras, which are useful within university sites, for example.

37.7 No issues on Part 33 rights were raised by other organisations and no cases were identified of Article 4 Directions being used to restrict Part 33 rights.

SCOPE FOR CHANGE

37.8 An assessment of the benefits and deficiencies of the current rights under this part and of the main changes considered for it, in terms of policy aims and effects on key stakeholders, is set out in Table 33 and discussed below.

37.9 CCTV facilities can be seen as supporting the Government's 1999 *Crime Reduction Strategy* and although there is some potential for conflict with design and protection of heritage aims, this is limited by the tight size and other limitations which apply. These cameras involve large numbers of generally minor and uncontentious development works, which do not appear to give rise to material planning issues. There is, therefore, no case for major changes to this Part although some alterations to address concerns raised have been considered.

37.10 However, there is some risk of proliferation of CCTV in the future and some account should be taken of technological changes which can help reduce potential impacts. There is an argument, therefore, for regular review of this part of the GPDO to reflect future advances.

37.11 The current permitted dimensions for cameras, which may have reflected technology available in the past, are large in terms of current technology available. This means that significantly smaller camera dimensions could be applied to minimise visual impacts. While a reduced size of cameras may be considered to exert less of a deterrent effect, their limited effectiveness in this regard and the benefits on visual impact justify consideration being given to reduced size limits. It is also understood that very small cameras are possible which can fit inside lamp standards; these are unlikely to be development. To move towards a more acceptable outcome, subject to technical feasibility, consideration should be given to reducing the size limitations for cameras, perhaps to half the current limit.

37.12 Although specific consent is required for the installation of CCTV cameras on listed buildings and scheduled monuments, sensitive areas such as conservation areas have no special restrictions. In some cases it would appear that large and prominently sited cameras are installed specifically to act as a visual deterrent, when such size is not required for operational reasons. However, given the absence of reported problems, no additional restriction on CCTV is considered appropriate for Article 1(5) land.

37.13 The overlooking of neighbours by CCTV could become a concern in residential areas and there is general acknowledgement that uncontrolled surveillance is unacceptable. However, CCTV is subject to control under the Data Protection Act 1998 and a CCTV Code of Practice, which sets out how CCTV schemes should operate to comply with this Act with regard to privacy. There is no need, therefore, to consider limitations to control privacy issues relating to CCTV in the GPDO.

- 37.14 The restriction on the number of cameras per building also reflects the aim of protecting visual appearance. However, many high security buildings are of a considerable size and some users have argued that more than four cameras are required on the same side of a building. While an alternative density measure (cameras per area of external walls) may offer an alternative, this appears more complex and the current restrictions do not appear to cause widespread problems. In addition, a requirement to submit a planning application for camera numbers beyond this GPDO limit does not appear unreasonable to give greater control in the interests of streetscape and design aims.
- 37.15 In certain situations, especially at building entrances or where building walls meet, the requirement for at least 10 metres between cameras appears to be a problem for achieving adequate surveillance. While consideration could be given to relaxing this limit beside building entrances and on adjacent walls which overlook each other, there is no indication that large numbers of planning applications result from this constraint and no change is proposed.
- 37.16 The current rights allow cameras on buildings but not apparently structures such as poles. Appeal decisions have interpreted '*buildings*' as including pole-like structures which are not plant but the position is unclear. Provided CCTV cameras were applied only to existing poles or structures, there appear to be some benefits in a change to Part 33 in this respect, although also some risk of additional street clutter if cameras appear more visible in such locations and some existing poles may not be suitable to attach CCTV cameras to. Within large sites, such as hospitals, universities or industrial premises, pole mounted CCTV should be acceptable if mounted on existing poles beyond 20 metres from the site boundary, and this change is proposed.
- 37.17 In summary, the principal recommended changes to this Part are therefore:
- **reduce size limits for CCTV cameras; and**
 - **allow pole mounted cameras within sites subject to a distance set back from site boundaries.**

Table 33: Assessment of recommendations for change to Part 33 of the GPDO

Proposed changes to Part 33: CCTV	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Existing rights.	√ Support security/crime reduction aims.	√ Avoid need for many minor planning applications.	√ Avoid delays from many minor planning applications.	X Some potential for visual impact on street scene/character of buildings/conservation areas but controlled by size/number limitations.	Lack of concerns raised by affected bodies and limitations in place indicates no need for major change.
1. Reduce size limits on CCTV cameras.	X May reduce visual deterrence effect on crime reduction aims. √ Would reduce scope for adverse impact on character of areas.	X Potential modest increase in number of planning applications until smaller cameras become standard.	X Need to make more planning applications until smaller cameras become standard, or where larger cameras wanted.	√√ Would reduce scope for adverse impact on character of areas.	Modest benefits to streetscape/urban quality outweigh potential for small increase in planning applications. Change recommended.
2. Allow CCTV mounted on existing street poles.	√ Support security/crime reduction aims.	√ Avoids need for small number of minor planning applications.	√ Avoids delays for small number of planning applications.	X Potential for increased street scene clutter, although limited by use of existing poles only.	Limited benefits balanced by some potential for adverse effects on streetscape. No change recommended.
3. Allow pole mounted CCTV within large sites	√ Support security/crime reduction aims.	√ Avoids need for small number of minor planning applications.	√ Avoids delays from number of minor planning applications.	X Potential for visual impacts limited by distance limit from site boundary.	Modest benefits to users/local authorities with limited potential for adverse effects. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) – indicates neutral impact pd = permitted development

CHAPTER 38

Other categories of development

- 38.1 This chapter considers the scope to extend permitted development rights to various other types of development not currently provided for in the GPDO, but proposed during the consultation process. Although possible additions have been carefully considered, it is also noted that in the 1998 review of the Scottish GPDO, which has eight fewer categories than the English Order, the general view of all the key stakeholders was that the scope of permitted development rights had gone as far as it could and no scope was seen for further extension (Annexe 5).
- 38.2 Relatively few proposals were made through the consultation process for new or extended categories of permitted development. Only a relatively small proportion (9%) of both local planning authorities and other stakeholders considered that the GPDO should increase the number of categories of permitted development, the majority seeking no changes.
- 38.3 An assessment of the benefits and deficiencies of the main, possible new categories of permitted development put forward for consideration, in terms of policy aims and effects on key stakeholders, is set out in Table 34 and discussed below.

RETAIL DEVELOPMENT

- 36.4 In 1993, aiming to reduce administrative burdens on small businesses, the Government carried out consultation on proposals to give limited permitted development rights for shops subject to safeguards to protect the environment and amenity of those living, working and visiting the area.²⁵ These involved the ability to:
- a. enlarge, alter or improve premises at the rear by up to 10% of the volume of the existing building, subject to a maximum of 100 m³ and provided that the height of the resulting building would not exceed that of the existing building or 4 metres high and not within 1-2 metres of the boundary. Any alterations were not to materially affect the external appearance of the premises viewed from the front; and
 - b. provide outbuildings at the rear, provided that they were not over 4 metres high and not within 1 or 2 metres of the boundary or did not occupy more than 50% of the area surrounding the building.
- 36.5 None of these changes was subsequently introduced and very few respondents in the current consultation process proposed similar changes. While this would give greater flexibility for small businesses, such a change could expand existing out-of-centre retail development in conflict with policy aims for central areas, although the

²⁵ Streamlining Planning, Department of Environment, December, 1993.

scale of development is very small. There may also be concerns that rear extensions would restrict servicing, so worsening on-street congestion. On balance, in the absence of clear evidence of a need or support for extended rights in this regard, no change is proposed.

TEMPORARY RETAIL STORAGE

- 38.6 Some retailers proposed that permitted development rights should apply to temporary storage of goods in service areas of stores for 2 months or so over the peak Christmas trading period. This typically occurs in service or other areas within the site curtilage that are not easily visible from public areas. Part 4 rights do not apply because the 28 day period would be exceeded and because the use is within the curtilage of a building. At present this activity requires several hundred planning applications every year across the country, very few of which are understood to give rise to objections or are refused. However, there appears potential for some adverse impacts related to servicing for stores that are not subject to conditions on hours of operation, and for additional vehicle traffic to cause impacts. The number of planning applications involved is not large for any one authority, or indeed for any retailer and it is increasingly common for local planning authorities to grant permission for continued intermittent use in such cases. On balance no change is proposed.

A2 OFFICES

- 38.7 Similar changes were considered in 1993 for financial and professional offices as for retail development but again, no changes were subsequently introduced. Similar considerations apply as for retail development and there was no pressure identified through this study for extension of permitted development rights to this use. Again, no change is proposed.

B1 OFFICES

- 38.8 The 1993 Government consultation did not consider change to this type of office use and very few respondents to this study proposed extending permitted development rights to it. Extensions of B1 offices appear more likely to give rise to material impacts, particularly since by definition they can be acceptably located in residential areas. They are also typically high traffic generators and unrestricted extension could conflict with policy aims to direct such uses to central areas. Given these factors, the absence of clear evidence of widespread problems from the absence of office permitted development rights, and the lack of any clear support for change from business groups, no changes are proposed in this regard.

FLATS

- 38.9 There are arguments that it is inequitable that a building divided into flats does not enjoy permitted development rights for say an extension or roof alterations, when an identical single dwelling-house next door is not restricted in this way. Such rights could, however, indirectly support policy aims encouraging higher density residential development, which is likely to mean more flats. Arguments against extending rights

to flats appear to be the greater potential for impact on other dwelling units in the building and greater likelihood of alterations to different units within the building producing a discordant external appearance. Although consideration could be given to allowing garden sheds etc. for flats with gardens, this could produce excessive built coverage where gardens are shared. On balance, no change is proposed in this regard.

WASTE MANAGEMENT FACILITIES

- 38.10 There have been suggestions that permitted development rights should be introduced for waste management operations, with a new Part of the GPDO e.g. *Development for Landfill and Landraising Operations* being suggested by one body. More flexibility to interchange between waste management activities and the B2 and B8 use classes was also sought, reflecting trends to locate waste transfer facilities on industrial estates. This was argued as likely to improve planning efficiency.
- 38.11 While Government sustainability aims would support sustainable waste management and recycling, it is considered that waste sites are likely to raise significant planning or environmental issues and should generally be subject to planning control.
- 38.12 Separately, a number of mineral planning authorities suggested minor infrastructure associated with waste management sites should be covered by permitted development rights, including equipment for monitoring boreholes and minor leachate, and landfill gas management equipment. Some landfill sites may have several hundred such items. These are sometimes regarded as *de minimis* and occasionally covered by the initial planning permission for the site, but not always, and there is frequently a need to relocate or alter them. While most appear likely to give rise to few impacts, they can be up to 5 metres high and some kind of size restriction is needed. While few cases were found of separate planning permissions being sought for them, to avoid doubt there is a case for applying permitted development rights. Such equipment would support waste management aims, and would involve works which are mainly minor in nature or replacing existing structures, which with suitable restrictions should be acceptable in the context of a waste management site. Since specific height limits will not work on sites of varied levels, a restriction along the lines of these works having no material effect on the appearance of the site as a whole may be more appropriate.
- 38.13 It may be that such changes could be incorporated into the existing Parts of the GPDO (e.g. Part 12) that involve waste, although a better approach would be to include them in a new Part covering a range of minor, site-related works.

OCCASIONAL USE OF PUBLIC BUILDINGS

- 38.14 Although not raised during the consultation process, consideration was given to the scope to permit occasional use of various buildings e.g. schools, halls, clubs, art galleries, museums, libraries, churches etc. for social or recreation purposes. Such uses are often carried out outside of planning control or regarded as *de minimis* because of the small scale or temporary nature of the activity. Part 4 rights allow only 28 days a year and do not apply within the curtilage of buildings. Making such uses permitted development would avoid any uncertainty and possibly reduce the

regulatory burden and costs of applications in some cases for often voluntary groups. The potential drawbacks of this change would be loss of control over traffic generation and associated noise impacts, while the number of planning applications saved is likely to be very small. On balance, no change is proposed in this respect.

SITE INVESTIGATION WORKS

- 38.15 Although not raised during the consultation process, some disputes occasionally arise with regard to various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions generally. While such works are often regarded as *de minimis* by local authorities, in some cases, planning applications are sought and cause delays. To avoid such uncertainty for what are generally small scale and uncontentious works, often essential to development of brownfield land, there is a case for making such works permitted development subject to conditions specifying a time period (e.g. 28 days), a size threshold and a requirement to restore land to its original condition. This could be in the form of a new Part of the GPDO, or possibly a new Class within Part 4: *Temporary Buildings and Uses*. It is interesting to note that *exempted development*, the broad equivalent of permitted development rights in the Republic of Ireland, includes a category: *'Any drilling or excavation for the purpose of surveying land or examining the depth and nature of the subsoil, other than the drilling or excavation for the purposes of minerals prospecting'* and some wording along these lines should be considered here.

CROWN IMMUNITY

- 38.16 There are current proposals in parliament to remove Crown Immunity from planning controls and this would have implications for a range of development, including military establishments. Development by the Crown is generally immune from planning control. Crown bodies may, however, apply for planning permission in advance of the disposal of a site under Section 299 of the Town and Country Planning Act 1990. If such immunity is lost, there may be cases where having to make a planning application could give rise to security or other concerns. For these circumstances, consideration should be given to extending permitted development rights to developments within, for example, military bases where security concerns arise, and made subject to some restrictions to minimise impact on surrounding areas e.g. distance from site boundary and height. One issue raised was that some Ministry of Defence land includes areas of archaeological importance and appropriate controls on any extended permitted development should apply in such situations. Until it is clear exactly what changes to Crown Immunity are likely, no specific recommendation is made here but this issue is highlighted as one for future consideration.

Table 34: Assessment of recommendations for possible new Parts of the GPDO					
Proposed extensions to GPDO	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Retail extensions and plant.	<p>√ would help reduce regulatory burden on small businesses.</p> <p>√ supports policy aims for town centres.</p>	<p>√ small reduction in numbers of planning applications for minor extensions.</p>	<p>√ avoids need for planning application and delays for small extensions but not proposed by any party.</p> <p>XX Could restrict rear servicing.</p>	<p>XX may adversely impact adjoining properties and conservation areas.</p>	<p>Small benefits to users and policy aims outweighed by potential for harm to adjoining amenity and heritage.</p> <p>No change recommended.</p>
A2/B1 office extensions.	<p>√ would help reduce regulatory burden on small businesses</p> <p>XX Could conflict with aims for town centres and reducing travel journeys.</p>	<p>√ small reduction in numbers of planning applications for minor extensions.</p>	<p>√ avoids need for planning application and delays for small extensions but not proposed by any party.</p>	<p>XX potential to worsen traffic generation and impacts on adjoining uses.</p>	<p>Small benefits to users and policy aims outweighed by potential for harm to adjoining amenity and aims for transport and office location.</p> <p>No change recommended.</p>
Extend Part 1 Permitted Development Rights to flats.	<p>√ Supports aims to raise residential density.</p> <p>X potential for conflict with design quality and conservation aims.</p>	<p>√ moderate reduction in numbers of planning applications for minor extensions etc.</p>	<p>√ avoids need for planning application and delays for small extensions but not proposed by any party.</p>	<p>XX may adversely impact adjoining properties and design of building and conservation areas.</p> <p>X potential for proliferation of sheds in shared gardens.</p>	<p>Modest benefits to users and LPAs outweighed by potential for harm to adjoining amenity, design and conservation areas.</p> <p>No change recommended.</p>
Allow waste management Operations on B2/B3 sites.	<p>√ broadly supports waste and recycling aims.</p>	<p>√ small reduction in numbers of planning applications that would otherwise occur in any LPA.</p>	<p>√ avoids need for planning application and delays.</p>	<p>XXX potential to worsen traffic generation and environmental impacts on adjoining uses and areas.</p>	<p>Significant benefits to users and policy aims outweighed by potential for adverse impacts, which should be subject to full control.</p> <p>No change recommended.</p>

Table 34: *continued*

Proposed extensions to GPDO	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Minor waste management facilities (e.g. equipment for landfill gas management, minor leachate and borehole monitoring).	√ broadly supports waste and recycling aims.	√ small reduction in numbers of minor uncontested planning applications.	√√ avoids need for planning application and delays for minor works.	√ supports proper monitoring of waste sites.	Modest benefits to users and policy aims with no obvious adverse impacts, for works which could be de minimis. Change recommended subject to height limit above ground.
Temporary retail storage.	√ would help reduce regulatory burden on businesses.	√ small reduction in numbers of planning applications that would fall to any one PA.	√ avoids need for repeated planning applications and delays for often uncontested development but no. of applications not great and permission for repeated intermittent use possible.	XX some potential for traffic impacts on adjoining area and effects on servicing.	Limited benefits to users and LPAs with some scope for adverse impacts. No change recommended.
Site investigation works.	√ supports aims for re-use of brownfield land.	√ small reduction in numbers of planning applications that would otherwise occur in any LPA.	√√ avoids need for planning application and delays for minor temporary works.	– minimal effects as temporary minor works that are subject to other controls.	Modest benefits to users and policy aims with no significant drawbacks. Change recommended subject to restrictions on size, time period, land restoration and proximity to residential uses.

Table 34: continued

Proposed extensions to GPDO	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Development currently exempt due to Crown Immunity.	-- no obvious impacts.	√ small reduction in numbers of planning applications that would otherwise occur in any LPA.	√√ avoids need for planning application and delays for minor works within large sites and where security issues involved.	√ may allow restrictions to minimise impacts to apply to development not subject to control at present.	Modest benefits to users if Crown Immunity removed with no significant drawbacks if applied to development within large sites.
Occasional use of buildings for social/recreational purposes.	√ supports aims for community development.	- minimal reduction in numbers of planning applications that would otherwise occur in any LPA.	√ provides certainty and avoids need for planning applications and reduces costs for voluntary groups but often not made subject to planning control.	X some potential for traffic impacts and disturbance in adjoining area.	Change recommended. Limited benefits to users and LPAs with some scope for adverse impacts. No change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 39

General changes

- 39.1 Responding to the various problems identified earlier, this chapter considers the need for general changes that relate to the GPDO and its procedures as a whole, rather than to specific categories of permitted development.
- 39.2 An assessment of the benefits and deficiencies of these elements of the GPDO, in terms of policy aims and effects on key stakeholders, is set out in Table 35 and discussed below.

IMPROVING INTERPRETATION AND USER FRIENDLINESS

- 39.3 As complexity and difficulty in interpretation were identified as major drawbacks of the current GPDO, a key aim must be to provide a more clearly drafted document that is simpler to use and interpret.

Drafting and Layout

- 39.4 The consultation process identified concerns on the general layout and drafting of the GPDO and suggestions to improve it, including a need for simpler and clearer wording that is consistent with being legally robust, drafting in the positive rather than the negative and avoiding use of double negatives. Complete redrafting of the GPDO should take place taking account of all these factors, and an example of how one section could be redrafted along these lines is provided in chapter 5.
- 39.5 Consideration has been given to adopting a different layout, including the simple tabular format used in the 1977 GDO and to set out types of exempted development in the Republic of Ireland. On balance, subject to better use of sub-headings, the current linear format was considered more flexible and comprehensible for Parts with many restrictions, particularly for use in any future electronic versions of the GPDO.
- 39.6 A particular issue is the lack of any consolidated, up to date version of the GPDO. While this was not raised specifically as a problem, it was clear from the consultation responses that many local authorities were not aware of some amendments since 1995. Provision of a composite, up to date version of the GPDO via the Planning Portal would be useful in this regard.

Definitions

- 39.7 There is a clear need to provide new or improved definitions or interpretation for all terms that have given rise to problems in the past, in order to reduce disputes on meaning of terms and the need to seek definitions from other documents. These definitions should be based, where possible, on case law and definitions found in relevant legislation and make clear any specific exclusions. Where new terms are introduced, it is important to choose these carefully to minimise subjectivity in interpretation, and defining the terms properly would aid this. Suggested definitions of some key terms are offered under the relevant sections and in Annexe 9.

- 39.8 While there is some logic in the current GPDO approach of providing definitions/interpretations related to a specific part of the GPDO in that location and more generally used terms elsewhere, this has caused some difficulties for users. The aim must be to have a single, easy to find point of reference for these terms that is clearly located through a table of contents. A reference superscript on each term so defined would confirm that a definition is provided and make location of it quicker. For ease of reference, key definitions could also be provided within the relevant Parts, even if this involves repetition. While this approach may not accord with legal drafting conventions, it could be adopted in a User Guidance document or a Circular relating to the GPDO.

RATIONALISATION

- 39.9 While it was suggested by some consultees that reducing the length of the GPDO would make it simpler and easier to use, counter views were that length was less important than a document which allowed users to find the part they needed easily with all the relevant supporting information to aid interpretation. The consultant's view tends towards rationalisation where possible but providing more sections where justified, provided that these can be made simpler to use with less cross-referencing to other parts of the GPDO.
- 39.10 Consideration was given to whether the GPDO would be easier to understand if the various Parts in Schedule 2 could be related to the types of development permitted (e.g. Part 2) or Use Classes, rather than which body has the rights to carry them out (e.g. Parts 15, 17). This appeared difficult to apply across all parts, although in Part 17: *Development by Statutory Undertakers* the differences between the nature of the development in each class do not provide a strong case for keeping them together, particularly as other statutory undertakers are dealt with in Parts 15, 16 and 18. While consideration was given to making each of the classes in Part 17 a new Part of the GPDO related to a type of development, it is not clear that such a change would significantly improve use of the GPDO. Subject to the limited rationalisation proposed, no better overall categories of permitted development rights emerged from the study than those now existing and which users, for the most part, accept.
- 39.11 To make these individual Parts simpler to use, the re-drafting would also aim to reduce the need for cross-references, ideally by including the text of relevant restrictions currently held in Article 3 (but at least making reference to it) and any appropriate extracts or definitions from other legislation.

REDUCING CHOICE OF PARTS

- 39.12 Some Parts allow users a choice of which permitted development rights to use for particular development. As a matter of principle, to avoid perceptions of unfairness and ability to circumvent planning controls, it is considered that such choice should be reduced where possible unless there is clear justification for retaining it or where no significant problems arise. This has been dealt with under each Part. For Parts 12 and 32, the choice on school development can be dealt with by introducing a separate new Part applying only to school development. The choice given to local authorities to erect a fence under Part 2 or 12, with the latter allowing up to 4 m in height, does not appear reasonable since fences higher than 2 m. could adversely

affect dwellings or gardens; changes are proposed to Part 12 to reflect this. For railway works carried out under Parts 11 or 17, no change was considered necessary. For mineral extraction operations possible under Parts 6 or 22, this problem can be dealt with by improved drafting and limitations within each Part. For the ability to extend/improve tracks under Part 6 or 9, specific restrictions are proposed under these two Parts. At the same time, two Parts (26 and 30) of the GPDO have been identified where removal could be considered as well as amalgamation of Parts 14 and 15 into a new Part relating to Drainage and Flood Protection.

INCONSISTENCIES AND ANOMALIES

- 39.13 It is considered that many of the anomalies and unintended effects of permitted development rights can be addressed through improved drafting of the relevant parts of the GPDO and providing better definitions and interpretations within it. Where this is not sufficient, specific restrictions to the provisions should be considered, as recommended under each Part.
- 39.14 Apart from size limitations (which are considered later), the wording of the GPDO with regard to the general scope of permitted development rights and the type of functions for which they can be used by a user, should be made more consistent. In particular, to allow for increasing outsourcing of works, rights should explicitly be made available to the specified undertakers and bodies acting *'on behalf of'* these undertakers (as now applies in Part 16) where this is appropriate, rather than relying on a variety of different terms or making no such provision. The description of the scope of the rights for each user e.g. *'for its undertakings'* should also use more consistent wording across different Parts unless there are sound reasons for any difference.
- 39.15 Otherwise, while consistency across permitted development rights should be aimed for where possible, in many cases there will be good reasons for adopting a different approach related to the scale and nature of the impacts involved and the other controls which apply. A rigid approach to achieving consistency as a general principle is not, therefore, recommended.

GUIDANCE FOR USERS

- 39.16 Although, guides such as the ODPM booklet *'Planning: A Guide for Householders'* are seen as useful for explaining Part 1 permitted development rights, the only existing document specifically relating to the whole GPDO, Circular 9/95, is not considered adequate by many users and local planning authorities for interpreting the GPDO. It contains little additional useful information to that in the Order and does not really clarify the main problems. Although much use is made of the Sweet and Maxwell *'Encyclopedia of Planning Law and Practice'*, this is not accessible to all interested parties and may be overly complex for some. Given that interpretation difficulties were identified as the major problem, specific and clearer guidance for GPDO users is necessary; what is most needed is a single, up to date point of reference.
- 39.17 There appear to be benefits, therefore, in providing a *'User Guidance document'* (possibly in the form of a Circular) to assist understanding of the GPDO and keep it up to date. While regular review of the GPDO is needed to keep it up to date and

address problems as they appear, it is recognised that this may not be practical and an updatable User Guidance document may go some way to addressing this need. This could usefully include an explanation of the purpose of different parts of the GPDO, why permitted development rights are given to certain functions, references to case law, simple explanation of specific rights and illustrated examples of how the rights may apply, as well as guidance on procedures, and flowcharts where appropriate. Making a frequently updated User Guidance document available over the Planning Portal would also be beneficial.

- 39.18 The User Guidance document could also clarify the position on removal of permitted development rights through conditions on planning permissions; this appears to occur frequently on new operational land of statutory undertakers and on mineral permissions. Relevant advice in Circular 11/95 could be reconfirmed in the User Guidance document, with examples given of where this approach could be acceptable. This would not replace the existing guide for householder development, which ought to be updated but retained as a separate and simply worded document.
- 39.19 There is also some concern that any such User Guidance document could be the subject of disputes in appeals etc. and suggestions that this should be produced by a body other than the Government. Given that similar guides exist for householder permitted development etc., that are made use of in appeals, it should be possible to provide an appropriate document along similar lines, but applying to the GPDO generally. Clarification could be inserted as to the purpose of the document, specifically that it is not intended to provide a formal Government legal interpretation of the GPDO.

SENSITIVE AREAS

- 39.20 Article 1(6) land includes National Parks and areas on their fringes while National Parks themselves are also included in the sensitive areas listed in Article 1(5) land. Consideration has been given to including both areas under the same designation although this could reduce flexibility where a restriction is aimed only at National Parks/fringe areas rather than other sensitive areas. However, there are few cases where this currently applies and where a restriction applies in a National Park, there is a clear case for applying it in an AONB. This reflects Government statements in June 2000 which acknowledged that these areas are of equivalent landscape quality and that they should have the same protection under the land use planning system. The same restrictions should therefore be applied within AONBs on those permitted development rights that are already restricted in National Parks, for example for forestry and agricultural development.
- 39.21 To make the GPDO a more easily understood document, it is proposed to replace references to Article 1(5) or 1(6) land, in each Part of Schedule 2, with a list of specific named areas where a restriction applies, as currently occurs under Part 22 and appears to work effectively in the Orders for Scotland and Northern Ireland. While this would perhaps marginally lengthen the text, this change would reduce the need to refer to other sections, make the document easier to use, and allow a more targeted approach to imposing restrictions, where there may not be a need to apply the same limitation in a conservation area as in an AONB, for example.

39.22 At the same time, limitations on permitted development rights in sensitive areas are not applied consistently to different categories of development, and only a few categories of development have specific restrictions (Annexe 6). For example, in such areas, the size of extensions to buildings is reduced for Parts 7 and 8 and prior approval is required for Part 30 development but few similar restrictions apply for other potentially large permitted developments, such as under Parts 13, 16, 17 and 18. Although the differential size limitations and EIA requirements provide some control in sensitive areas, extending prior approval requirements to more categories of permitted development in these areas could provide more control over siting and appearance and generally support Government aims to protect sensitive landscape. However, this has been considered in a carefully targeted way, on a case by case basis, where justified by evidence of adverse impacts. Increased restrictions should therefore apply to Parts 6, 9, 13, 29 and Class A of Part 17. Many undertakers already consult planning authorities informally and formalising this process need not necessarily cause delays or greatly increased workloads for the regulating body.

Case Study 13:

In the Chilterns Area of Outstanding Natural Beauty (AONB), the highway authority proposed a new roundabout south of Princes Risborough. The Chilterns Conservation Board objected to the proposed high level of lighting and signage, because of its impact on the AONB. The highway authority is currently considering responses received, but is under no obligation to take account of comments from either the Conservation Board or the local planning authority, or to notify these bodies of proposals.

Nature Conservation Sites

39.23 Various interest groups raised the potential for adverse effects from permitted development within or beside important nature conservation sites, particularly SSSIs. Some of these sites are designated as of European importance and have some protection under the Habitats Directive. Only a few areas of the GPDO have specific restrictions applying to SSSIs. However, not all users of permitted development rights may be aware of such restrictions. Relatively few examples of actual harm were identified but relevant interest groups note that any adverse impacts can have major effects and may be irreversible. To reflect the importance of these areas to biodiversity, provide adequate protection and to ensure that all potential users of permitted development rights are aware of restrictions, it is proposed to remove permitted development rights (or at least require prior approval) within SSSIs for those categories more likely to cause harm. These would include Parts 2, 4, 6, 7, 9, 10, 13-24, 27 and 29. As statutory undertakers are required to consult in such areas anyway, and removal of permitted development rights should encourage development away from protected areas, the increase in numbers of planning applications from this change is not expected to be onerous.

Archaeological Sites

39.24 Similar types of concerns have been raised that certain permitted development works involving disturbance of ground can affect archaeological sites and scheduled ancient monuments without any notification of relevant consultees. In one case identified, this threat prompted an Article 4 Direction and has been used as a means of seeking compensation. Following examination of case studies (Case Study 15, Annexe 7), it does not appear unreasonable for permitted development in designated areas of

archaeological interest to be subject to some restriction to enable investigation or conditions in a similar way as applies to planning applications. However, careful definition of the archaeological area in which to apply this restriction is important to avoid large numbers of unnecessary notifications. A restriction should therefore be inserted in Article 3 to apply across specific Parts of Schedule 2 to require prior approval for permitted development works that involve significant disturbance of ground within limited areas of archaeological interest already defined in Article 1(2). This would effectively apply to areas designated as Scheduled Ancient Monuments.

Case Study 15:

In North Hertfordshire, land surrounding a medieval earthworks site was affected by works to provide a new farm reservoir. The local planning authority is unable to control the siting of such small reservoirs within close proximity to Scheduled Ancient Monuments or other archaeological areas and is unable to secure any archaeological investigation or change the location. Article 4 Directions were perceived as too slow to protect archaeological remains from inappropriate development.

Flood Risk Areas

- 39.25 The Environment Agency raised concerns that it is not consulted on many permitted developments which have potential flooding, groundwater or water pollution implications e.g. changes of use from industrial to offices, industrial extensions, buildings above aquifers, dredging works and mineral exploration, and it sought notification of all such cases. The large areas, large numbers of development and the potential lengthy delays that this could involve, suggest a cautious approach to any changes here. Within key flood risk areas designated in development plans, there may be a case for restricting or requiring notification of the EA on development above certain thresholds but it is not clear that the scale of potential problems justifies this. This issue affects many elements of permitted development and changes would have major implications so that further, separate investigation is needed before any change is recommended.

World Heritage Sites

- 39.26 Greater restriction on permitted development within World Heritage Sites has been considered. Such areas are very varied in nature, can sometimes cover large areas and often have additional designations that would restrict permitted development (e.g. AONB, SSSI or conservation area) but it is not clear that this applies in every case. For a designated site such as the City of Bath, a blanket removal of rights could unnecessarily impose restrictions across all areas not already within conservation areas and which may have little impact on the setting or character of the City. At the same time, it would be desirable to make clear that permitted development rights for large, highly visible infrastructure do not apply in such areas if they are not covered by another designation preventing this.
- 39.27 The World Heritage designation is a material factor for planning applications but in 1989 the Government did not consider there was a need for any specific planning restrictions in such areas.²⁶ World Heritage Sites are also defined as sensitive areas in the EIA regulations where any development proposals should be screened and on

²⁶ Debate in House of Lords, Hansard, February 1989.

this basis, permitted development rights can be removed if significant impacts are likely. The Article 4 Direction offers an additional control route and indeed this approach to restrict permitted development applies to an extensive area around Stonehenge; with any compensation rights removed, this offers a more targeted control over such sites, where existing designations are not sufficient. No additional restrictions are therefore proposed in this respect but the User Guidance document should emphasise the need for careful control over permitted development rights in such designated areas and that a sympathetic view would apply to approving Article 4 Directions to protect such areas. A similar approach could be used for other areas without statutory protection, such as historic battlefields and registered parks and gardens, if a real threat is identified that is not controlled by other designations.

GREEN BELT LAND

- 39.28 Suggestions have been made by a number of planning authorities that Green Belt land should be either included under Article 1(5) or made a specific designated area, in order to restrict permitted development that would affect the openness of the Green Belt. Some authorities noted that planning applications for dwelling-house extensions are refused on these grounds, but slightly smaller extensions under Part 1 cannot be controlled. This particularly applies to householder development but could have implications for other Parts such as Parts 6, 7 and 16-18. However, agricultural and forestry-related development are generally acceptable in Green Belts and support uses which maintain the openness of Green Belts.

Case Study 12:

Enforcement action was taken against a number of large barn-type buildings which had been erected in an exposed part of the London Green Belt, it being argued that they were needed for agricultural purposes. An appeal was dismissed since the farm site was held not to be in genuine agricultural use. A specific restriction on Part 6 rights within Green Belts would have made clear that planning permission was needed and avoided lengthy enforcement action. However, such restriction would undermine genuine farmers in Green Belts which are often in urban fringes where other problems exist.

- 39.29 Case studies examining the effects of agricultural and aviation development on Green Belts did not find evidence of major problems that justified special restrictions (Case Study 12, Annexe 7). It was also not clear that householder permitted development has significant impact on the key strategic purpose of Green Belts of openness and to prevent coalescence, and restrictions on this would give rise to a large increase in planning applications. On balance, no change is proposed in this regard.

SELECTIVE RESTRICTION

- 39.30 While additional restrictions on permitted development often apply within the more sensitive areas, some respondents questioned this selective approach, arguing that the design quality and environment of these designated areas will be protected or enhanced while the remaining areas will not, unfairly disadvantaging their residents.

39.31 There are clearly merits in this argument but to address it fully would require restrictions being applied much more widely, perhaps unnecessarily in some cases, and give rise to much greater numbers of planning applications. The compromise adopted by the Government in previous changes to the GPDO has been to strike a balance between these factors and on this basis, focusing on the more sensitive areas appears reasonable. It is considered that where a key change is needed to the GPDO, it should also apply outside the more sensitive areas where it will have significant benefits without great resource implications for local authorities. An alternative would be to impose restrictions more widely and rely on local authorities to relax them selectively using the proposed Local Development Orders, although this will have resource implications for local authorities.

ARTICLE 4 DIRECTIONS

39.32 As indicated in Chapter 3, over one third of local planning authorities did not consider Article 4 procedures worked well and 40% of respondents had either not used them, or used them very rarely. Other stakeholders expressed few views on their use but most responses indicated that more use should be made of them but that fear of compensation was deterring this. Article 4 procedures are widely regarded by local planning authorities as a cumbersome and resource-intensive control tool, of limited value where quick action is needed and with several other factors deterring wider use, such as the requirement to obtain approval from the Secretary of State (for Article 4(1) Directions) and compensation liability. Such problems could be partly reduced by best practice guidance on making Article 4 applications, and a simplified procedure would help. Extending the ability to apply Article 4 Directions outside conservation areas without the Secretary of State's approval may encourage wider use of this tool, but would reduce existing checks and balances.

Case Study 11:

In a central London Borough, the local authority applied an Article 4(2) Direction in a conservation area to prevent demolition of front garden walls, following pressure by the Residents Association. This led to pressures for planning applications to demolish garden walls and to seek compensation on refusal of up to £50,000 per property. The Article 4 Direction was not confirmed leaving the Council powerless to control further erosion of the character of the conservation area, with the problem now spreading to surrounding streets.

39.33 Despite these limitations, some value is seen in adding a new type of Article 4 to help deal with the problem of harmful effects from enclosure of small 'leisure' plots in rural areas. This is discussed in more detail at paragraph 39.41 below.

39.34 Since the greatest problem with this tool is limited local authority resources to utilise it, there may be little scope for improvement in its effectiveness without some of the above changes. Clarification that the term 'fronting the highway' in Article 4(2) Directions can apply to side slopes of roofs visible from the street, as well as the facing roof slope, was one change seen as beneficial. Otherwise, the focus in this study has, therefore, been on proposing changes to restrict permitted development rights that would otherwise require an Article 4 Direction to address. On this basis,

it appears better to remove a range of permitted development rights automatically from conservation areas at their designation (or subsequently) to avoid the need for Article 4 Directions. These could be relaxed to reflect local circumstances by Local Development Orders.

- 39.35 As a long term change requiring revision of primary legislation, there appears to be a case for removal of the compensation right for a refusal of planning permission after permitted development rights are withdrawn in this way. This was recommended in the 1997 review of Article 4 procedures but never implemented.²⁷ The actual number of cases of compensation being sought does not appear high, and does not justify change in itself. However, as indicated in Chapter 3, this compensation liability does appear to act as a deterrent to some local planning authorities and there is scope for abuse of this right (see also Case Study 11, Annexe 7). Based on consultation responses, there are some reasons to believe that removal of this liability would encourage wider use of Article 4 Directions by local planning authorities, although resource constraints will also determine whether they actually do so.
- 39.36 Although there is no evidence of widespread problems arising at the present time, as a matter of principle it is not clear why this compensation right should apply in cases where local planning authorities are acting in support of Government policy aims. A check on misuse by local planning authorities is provided by the need for the Secretary of State to approve some Directions and the high resource levels required to instigate this procedure in the first place. This right was removed in Northern Ireland some years ago without apparent problems. It is also noted that compensation rights to extend buildings in England under Schedule 3 of the 1971 Act were removed through legislative changes without major problems. Providing a procedure exists for objecting to a proposed Article 4 Direction and it is considered by the Secretary of State, there appear unlikely to be any Human Rights issues applying to such removal. Removal of this compensation provision is recommended.

ARTICLE 3 RESTRICTIONS

- 39.37 The need is recognised for a set of general restrictions that apply to more than one category of permitted development, as Article 3 currently does. The main concern with this approach is that it requires users to refer to more than one part of the GPDO to form a complete view on the extent of the rights that apply, and those less familiar with the GPDO may not do so. For easy reference, the relevant restriction would ideally be repeated under the Part to which it applies. If this results in too long and repetitive a document, each Part should at least make note of any special restrictions imposed under other Articles of the GPDO.
- 39.38 Several instances are identified in this report where additional, general restrictions on permitted development rights are considered appropriate to add to Article 3. One of these should be a requirement, to remove within a specified period, redundant equipment/structures provided under permitted development rights (e.g. telephone boxes), a principle which already applies in certain parts of the GPDO and should support aims to improve the built environment. Some definition of 'redundant' in the GPDO or User Guidance document would also be needed. Consideration could also be given to explaining that permitted development rights do not override TPOs.

²⁷ Use of Article 4 Directions, Department of the Environment, 1995.

ARTICLE 7 DIRECTIONS

39.39 From discussions with mineral authorities, limited use is made of this procedure for removing permitted development rights for Part 22 and 23 mineral related works, but it is considered an important fall-back control that supports negotiations with mineral operators. No general problems were identified with its operations, either by operators or mineral planning authorities. One case was identified where the potential for a compensation claim arose after this procedure was considered to prevent removal of material from a historic mineral spoil tip under Part 23. With no evidence of widespread problems, there is no case for change to Article 7 procedures at present, but if found to be a growing concern, consideration could be given to removal of the compensation provision after Article 7 Directions are used, if this recommendation is adopted for Article 4 Directions.

LEISURE PLOTS IN RURAL AREAS

- 39.40 As identified in Chapter 6, the issue here is the sub-division of agricultural land into many small plots, which are then sold off individually, with fencing erected under Part 2 permitted development rights, and sometimes caravans and hardstanding placed on the plot. This adversely changes the character of undeveloped land in rural areas and Green Belts and may eventually lead to it becoming developed land more likely to be allocated for development.
- 39.41 A number of approaches could be considered to address this problem. Existing Article 4(1) directions have major drawbacks for this purpose, because they are slow to prepare, require approval by the Secretary of State, and cannot be used retrospectively. One option would be provision of a new type of Article 4 Direction which, as for Article 4(2) Directions, would not require approval by the Secretary of State, and would allow removal without compensation of specific permitted development rights. This would apply only to previously undeveloped land or land that was formerly part of an agricultural holding/agricultural use. However, this Direction would still be very difficult to apply quickly enough to be effective, even with very careful monitoring of sub-division proposals. This may be a useful addition to the weapons available to target the problem but insufficient in itself.
- 39.42 In some cases, it may be possible to conclude that a material change of use from agricultural land has occurred and take enforcement action, although some plot owners could undertake minimal agricultural-type uses to circumvent this. Other procedures are available under planning legislation, including Sections 102 and 215 of the Town and Country Planning Act. The former can require discontinuance of a specific use of land and removal of structures, but requires approval by the Secretary of State. The latter procedure can require proper maintenance of land, usually where such land is affecting amenity, but this is also not usually a quick procedure to implement and it is not clear whether it could require removal of enclosures erected with permitted development rights. These measures could however be useful to deal with other aspects of the problem that are not permitted development. Erection of hardstanding and placing caravans on the plot could be enforced against since planning permission is required.

- 39.43 Amending the GPDO itself to remove specific permitted development rights in the situations described above appears justified by this serious and growing problem. This should only be necessary for Part 2 rights, both means of enclosure and formation of an access; creation of a hardstanding under Part 6 applies only to agricultural land within an agricultural unit and would not apply to such plots under 0.4 ha. in size. Caravans could normally only be placed on the site for 2 days under Part 5 rights. However, it is possible that some owners could try to utilise these rights erroneously and cause damage to land. Any changes would need to restrict rights under several Parts but would also need to be carefully targeted to avoid removing permitted development rights for other landholdings that cause no problems e.g. the ability to erect a fence around the curtilage of a dwelling, or to prevent a genuine farmer enclosing a small area of land for sheep. Applying a restriction on Part 2 rights based only on the size of a landholding would not be feasible for this reason.
- 39.44 There is probably a need to have a range of measures available, for use in parallel or tailored to a particular situation including a new type of Article 4 Direction. However, in terms of the GPDO, a suggested approach would be to insert a restriction within Article 3 to remove permitted development rights under a number of Parts with respect to *previously undeveloped land or undeveloped land that was formerly (but no longer) part of an agricultural holding or in agricultural use*. This would include at least the rights under Parts 2, 4, 5, 6 and 9. This may be more than strictly necessary but would clear that there is no scope for use of any useful rights on small plots. To avoid loopholes of small plots being ostensibly used for some kind of agricultural use initially, it may also be necessary to specifically restrict enclosures under Part 2 on such land where not for a purpose reasonably related to agriculture. This would add complexity to Part 2 but is justified by the importance of the problem.

AIRPORT SAFEGUARDING

- 39.45 A restriction currently applied to some categories of permitted development (eg Parts 6, 7, 22 and 24) but not others is the height limitation within a specified distance of an aerodrome to allow consideration of potential hazards to aircraft. There is general concern by aviation bodies that, other than for telecommunications masts, there is no procedure to enable the CAA or airports to be consulted on high buildings or structures erected under permitted development in airport safeguarding areas, when they do have to be notified of certain planning applications near airports with a safeguarding map.²⁸ The appropriateness of the current height limitations in the GPDO is also not clear since the limits are very low, apply only within 3 Km. of an airport although safeguarding areas can extend much further, and take no account of ground levels.
- 39.46 Since height limits in safeguarding areas vary with distance from the airport and the level of the land, it is difficult to specify a simple height/distance limitation within the GPDO. Detailed investigation of this issue (see Case Study 7, Annexe 7) did not identify a simple control mechanism acceptable to aviation bodies. The simplest, but

²⁸ Circular 1/2003: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002.

relatively crude, approach would be to extend the current type of control found in Parts 6 and 24, for example, to other Parts of the GPDO which involve significant structures, so that any development exceeding X metres in height (or the height of the highest structure on the site) within 3 Km. of an aerodrome boundary would not be permitted development. An appropriate height limit should be agreed with the CAA. This control could be through an insertion in Article 3 and for many airports should not involve large numbers of applications, although it may be appropriate to exclude Part 1 development to avoid many unnecessary applications in this regard.

Case Study 7:

A prior approval notification under Part 24 was made for a 15 metre high telecommunications mast some 400 m from the end of the runway of Fairoaks Airport in Surrey. This was considered a potential safety hazard and the airport was able to object and offer to discuss alternative siting. However, most other permitted development is not subject to this notification requirement and the airport has no way of identifying such potentially hazardous development before it is built.

- 39.47 An alternative and more satisfactory approach in some ways would be to make permitted development rights conditional on any such development within an airport safeguarding area (as defined by the safeguarding plan lodged with the local planning authority) complying with the limitations of that plan, being notified to the local planning authority and no objection being raised by the airport operator/CAA within a specified period e.g. 28 days. This would place the onus for consultation on those exercising the permitted development right and would require them to check with the local planning authority, which would hold the safeguarding plan, whether their proposal lay in the affected area and complied with relevant limits. This would clearly impose a significant additional burden on local authority workloads. To reduce this to some extent, the safeguarding plan could be made available to the public in local authority offices or attached as an annexe to the development plan.
- 39.48 A compromise option to reduce numbers of planning applications submitted would be to require prior notification to local planning authorities of any development exceeding X metres in height (or the height of the highest structure on the site) within 3 Km. (or other agreed distance) of the perimeter of an aerodrome. These proposals would then be checked against the aerodrome safeguarding plan by the local planning authority and only those exceeding specified limits would be subject to full planning control, or require prior approval of siting and height. This would require an insertion in Article 3 that permitted development rights are removed (or subject to prior approval) for development that exceeds relevant height limits in the safeguarding plan. This option also has resource implications for local authorities although this is would be offset by fewer planning applications than in the other options.
- 39.49 On a separate issue, Circular 1/02 advises on restricting permitted development rights that would lead to more people living, working or congregating within defined Public Safety Zones at the ends of airport runways. The GPDO should be amended to reflect this clear policy aim. While it appears more likely to affect Parts 1, 4-8, 17-19, 27 and 32, additional text should be inserted in Article 3 to impose this restriction across all relevant Parts. Any increase of planning applications should not be large for any individual planning authority and supporting development plan policies should help reduce such proposals.

PRIOR APPROVAL/CONSULTATION

- 39.50 There is a general dislike of *'prior approval'* procedures by local planning authorities, partly due to the short time limits imposed and to the public's difficulty in understanding their limited scope. There is also inconsistency in the way prior approval and other consultation processes are applied across the GPDO, with no time limits in some cases, as well as some uncertainty on how the procedures should operate e.g. whether conditions be applied. This must be balanced against the benefits to users that have grown used to this procedure, consider it works well, and that it provides certainty of a decision within a reasonable timescale. However, very few users wanted prior approval introduced to the permitted development rights they use.
- 39.51 A case study undertaken confirmed these problems (Case Study 10, Annexe 7). One option would be to remove prior approval and require full planning control in situations where adverse effects arise from the current approach. This approach may be appropriate in sensitive areas and indeed is proposed for Part 6 development. Elsewhere, such a change needs to be justified by clear evidence of problems with the current procedure that cannot be addressed by revisions to it. This has been considered on a case by case basis for each Part but not found necessary other than for Parts 6 and 9.

Case Study 10:

An appeal against refusal of prior approval, under Part 6 of the GPDO, for glasshouses in the Sussex Downs AONB was dismissed on the grounds of their siting causing unacceptable harm to landscape. In relation to the prior approval process, the Inspector noted that little constructive dialogue had taken place on alternative siting, that the appellant had little knowledge of the planning system and that the local authority had not recognised that the principle of the development was not for consideration in the prior approval process.

- 39.52 Taking account of the need to resolve the concerns of different stakeholders while addressing identified problems, it is proposed to amend the current prior approval procedure as follows:
- Provide fixed, longer periods for local authorities to respond to prior approval.
 - Establish a specific time limit where such limits do not exist.
 - Require all details on siting, design and materials, which could be asked for by the local planning authority within a specified period, to be submitted at the start of the notification period; this reflects current practice by some undertakers.
 - Clarify that public consultation can be carried out on the prior approval details.
 - Increase the fee to a level comparable with that for a planning application.
 - Provide clear guidance on the prior approval procedure in a User Guidance document, including what conditions can be applied, the remedies available to the user and how local authorities should operate the procedures and undertake consultation.

- 39.53 These changes could effectively make the prior approval procedure very similar to that for a planning application, except that a decision would be guaranteed at the expiry of the specified period, which could be 56 days. This would retain certainty for developers, while allowing more determination time and fees for authorities and more clarity on public consultation. While it may be argued that the greater scope and time for public consultation will raise expectations that may not be met, this would at least provide more time for local concerns to be raised, and addressed to some extent.
- 39.54 Different forms of consultation apply across the GPDO which some argue are deliberately tailored to particular circumstances. For example, only '*consultation*' (with no specified time limit, refusal rights or indication of details required) is needed for certain airport buildings under Part 18. It has been argued that no more formal consultation process is required as the scope for alternative siting on airports, for example, is greatly limited by operational or safety factors. It may, therefore, be inappropriate to seek rigid consistency on this issue across the GPDO and consultation provisions in each Part should be considered on their merits. Given the special circumstances of airports, with various regulatory controls and operational limitations, informal consultation procedures agreed between some airports and local authorities appear to work effectively and may be an acceptable alternative to formal prior approval. At the same time, the absence of a time limit on consultation under Part 19 was identified as a problem causing delays, and there appears a case for imposing a limit in this instance.

SIZE LIMITS

- 39.55 There are inconsistencies between the size limitations across different parts of the GPDO (see Annexe 6). This may be an inevitable consequence of seeking to apply thresholds to different types of development and environmental contexts, or it may arise from amendments made for different reasons at different times. To improve consistency, it is considered that similar limitations should apply in similar circumstances unless good reasons exist for a different limit. Examples of differences are the 10 m height limit for toll road facilities, but 12 m for mineral exploration structures and 15 m for plant under Parts 8, 15, 19 et. al. A general 15 m limit in these cases would be more consistent unless other reasons for a lower limit are identified, but no case for increasing existing height limits was made through the consultation process, and no change appears justified.
- 39.56 The 25 metre limit for amusement parks appears justified by the high established structures already found in such areas. As discussed under Part 18, airports have special circumstances, with a need for very large buildings to meet operational and regulatory requirements within sites already containing large structures. No changes appear justified to these height limits on the evidence of adverse effects.
- 39.57 A common mechanism for controlling the scale of permitted development extensions of buildings is a volume limit based on that of the original building. This applies particularly to Part 1 but also to other parts including Parts 7, 8, 15, 16, 32 and to some classes of Part 17. However, this mechanism is often reported as very difficult to operate for large, complex buildings, some residential premises and buildings which have been frequently altered over a period of time. This was confirmed by a case study of householder development (Case Study 1, Annexe 7). For Part 32, this

limit appears to be a factor that deters use of these rights. The main problem area is Part 1, due to the large number of extensions involved and the consequent amount of local planning authority time taken up by measurement of plans and calculating volumes of the original dwelling-house; there is evidence that the volume change is not always checked accurately for such reasons. While the Planning Portal provides a facility to assist volume calculations, this may not be accessible to or necessarily understandable for all users.

Case Study 1:

In the London Borough of Bromley, of the 3,000 informal enquiries on permitted development rights each year (most relating to Part 1), up to 70% involve significant officer time in measuring volumes of original buildings and proposed development. Related research to assess the status of the original dwellinghouse involves examining historic planning files and frequently requires at least 2 hours per enquiry.

39.58 For simplification and making the planning system easier to operate, consideration should be given to an alternative control mechanism that does not involve these difficulties, at least for Part 1 which involves the most calculations of this type. These could be a combination of one or more factors such as a floorspace limit, building height, length of extension, proportion of the curtilage or distance from the site boundary. The proposed redrafting of Part 1 in Chapter 6 proposes a control on extensions based on floorspace, distance from the site boundary and proportion of the curtilage – factors which are relatively simple to estimate. It is considered necessary for the size limit for extensions to relate to the size of the original dwelling, as a flat rate could reduce allowances for larger dwellings and allow repeated extensions. This change would not alter the size threshold for extensions, since the floorspace limit would be approximately equivalent to the current volume limit, and so should be broadly neutral in terms of numbers of planning applications required. The Scottish GPDO has relied for some time on floorspace rather than volume limits for extensions under Part 1 and no significant problems with that approach were identified by the recent review of this Order.

STREETSCAPE ISSUES

39.59 The impact of permitted development rights on streetscape is a key concern of Government policy. These impacts can arise from several Parts of the GPDO and are considered generally here as well as under the individual Parts. The concerns stem from repairs to roads and utilities, which are often not development, and from provision of various infrastructure, traffic signage, street lighting and utility control boxes, mainly under Parts 12, 13, 17, 24 and 29. The adverse impacts from proliferation, poor siting and maintenance, or the scale of such works on the general appearance of the streetscape have been identified in Chapter 3. Although prior consultation with local planning authorities is encouraged, few enforceable restrictions apply on these rights. Current proposals by the Department for Transport seek to improve co-ordination of streetworks, but the quality of reinstatement works could still be an issue.

Case Study 5:

Permitted development works have had significant effects on the quality of streetscape in the Archway area of London, with a proliferation of traffic signs, bollards, signposts and litter bins, while redundant bollards, poles and litter bins remain. Street cabinets of telecommunication and utility companies are often poorly sited, and many covered in graffiti. A bus shelter is sited at the only point where the pavement narrows, restricting pedestrian flow. Street furniture creates 'dead space' and breaks sightlines, creating opportunities for crime. The local planning authority has little or no control over street furniture, as it falls within the permitted development rights of local authorities, local highway authorities or statutory undertakers and there is no requirement for prior approval of siting, design or materials. There appears limited co-ordination between Council departments and little consideration of urban design/streetscape/crime prevention issues by the highway authority, which is focused on highway safety.

- 39.60 A number of specific concerns or proposals were raised by interest groups concerned with the built environment, particularly:
- prior approval should be required for any street infrastructure giving rise to significant visual impacts including signage, fences and street furniture;
 - the need to require sensitive reinstatement to avoid historic surfaces being damaged by statutory undertakers;
 - poorly sited street furniture can obscure CCTV and conflict with crime prevention measures; and
 - there is no co-ordination of activities by various undertakers and a Street Management Code should replace the GPDO for works affecting streetscape.
- 39.61 There are two main issues here – inadequate reinstatement of streetscape surfaces after works by statutory undertakers and others, and the visual impact of proliferation of often poorly sited street furniture and redundant structures.
- 39.62 On the street surface reinstatement issue, repair works by statutory undertakers are not classified as development and so not subject to planning control. Other controls are available under the 1991 Street Works Act while the Department for Transport produces a Code of Practice on Reinstatement Works and is carrying out a number of pilot schemes across the UK to ensure a higher quality of such work and better co-ordination. If these measures do not improve the situation, a radical measure recommended would be to classify repairs to services by local authorities and statutory undertakers as development. These could then be permitted by an amended Part 10 of the GPDO but made subject to conditions requiring both notification to the local highway authority and the reinstatement works being carried out to the satisfaction of the local planning authority. Emergency repair works should not be affected by this change. While this would involve changes to primary legislation, it would be justified by increased protection of streetscape and urban character (see also Case Study 5).
- 39.63 To address the second issue of street clutter in order to better support Government aims on design and urban character, additional restrictions should be considered on permitted development rights of statutory undertakers and other undertakers that affect streetscape (e.g. Parts 12, 13, 16 and 29). Various approaches have been

considered. Previous research recommended greater use of codes of practice between local authorities and statutory undertakers, but this is difficult to enforce.²⁹ Requiring prior approval or a planning application for every item of street infrastructure appears unduly onerous although could be considered for conservation areas. Some authorities have adopted Supplementary Planning Guidance on streetscape or highway works in conservation areas and encouraging compliance with these would help, but again this is not enforceable.

- 39.64 Other than to bring all such works under full planning control, the most radical approach would be to make permitted development rights apply to certain types of street infrastructure works only where these are located below the surface of the pavement, with anything above ground level requiring prior approval, or full permission. Many utility facilities are already located underground. This approach offers the greatest potential for less street clutter but could have significant implications for undertakers and should be subject to consultation as to feasibility.
- 39.65 An alternative and less radical approach would be to rely on the preparation of a national Street Management Code in consultation with relevant organisations, then adopted by local planning authorities. This would contain simple and clearly defined guidelines on the siting, sharing, colour etc. of street furniture and on reinstatement works, and may be a nationally agreed set of guidelines to offer greater consistency for undertakers. It may be adapted and adopted as Supplementary Planning Guidance and supported by a development plan policy. The GPDO would then be amended so that only street works that comply with this Code would be permitted development. In the absence of such a Code, all such works would not be permitted development, providing local planning authorities with a strong incentive for adopting one. The legal feasibility of this approach, linking the GPDO to a non-statutory document, needs to be confirmed.
- 39.66 A variation of this to avoid such legal constraints would be to make permitted development rights under the relevant Parts conditional on the works being sited and their external appearance being such as to minimise visual impact on streetscape and on pedestrian flows. This would be consistent with restrictions in other Parts of the GPDO and enable the local planning authority to seek changes to or refuse unacceptable works. The acceptability of works against this condition would be assessed by the local planning authority with reference to the Street Management Code, and the GPDO User Guidance document would explain this approach to encourage compliance and gradually educate users.

CONFIRMATION OF PERMITTED DEVELOPMENT RIGHTS

- 39.67 Chapter 3 and Case Study 1 (Annexe 7) identified the large numbers of enquiries received by some local authorities requesting written confirmation that permitted development rights apply to a particular situation, many relating to Part 1 householder development where such confirmation is needed prior to a sale. Authorities can receive 3,000 queries annually. The often extensive work involved in checking these requests reduces the benefit to local planning authorities' workloads from having permitted development rights. A simple response letter from planning officers is not always sufficient since it has no legal status.

29 Permitted Development Rights of Statutory Undertakers, DETR, 1997.

39.68 Some local planning authorities require submission of an application for a Certificate of Proposed Lawful Use (CLOPUD) for this purpose, with a fee set at half that of a planning application for the works involved. A similar procedure Certificate of Lawful Existing Use or Development (CLEUD) applies to works already carried out but with a larger fee equivalent to that for a planning application. This approach formalises a process that has to be carried out anyway in dealing with such requests, and provides confirmation that can be relied upon. The GPDO User Guidance document should advise on best practice to deal with such requests on permitted development but there appear benefits in the CLOPUD/CLEUD route, or something similar to it but with perhaps a lower fixed fee related to the average amount of time spent by planning officers dealing with the query. This would provide householders with legal confirmation of the status of works under permitted development while the fee would offset the impact on local authority workload.

Table 35: Assessment of recommendations for proposed general changes to the GPDO

Proposed changes	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Remove compensation right arising from Article 4 Directions.	√ supports operation of planning system to prevent adverse impacts on urban character and generally.	√√ would remove key deterrent factor to wider use of Article 4 Directions although other deterrents exist. √ removes financial penalty on LPAs exercising proper planning functions.	X requires planning application with costs and delays.	√√ supports controls at avoiding adverse impacts of development e.g. on urban character and amenity.	Benefits to planning control generally outweigh small adverse effects on users although few actual cases of compensation being sought. Change to be considered.
Extended prior approval procedure.	√√ supports better operation of planning system and community involvement.	√√ extended period for consideration and consultation, greater clarity on operation.	XX in most cases longer period to obtain decision. X increased fee and complications from public consultation.	√√ greater opportunity for consultation and transparency.	Important improvements for LPAs and community interests outweigh increased delay for users. Change recommended.
Restrict permitted development in green belt.	√√ Supports aims to protect Green Belt openness. X conflict with aims to support rural economy and airport development.	XXX Substantial increase in planning applications for agricultural buildings.	XXX increased regulatory burden for marginal farmers on urban fringe.	√√ increased protection of Green Belt but agricultural development acceptable in principle, and few cases of harm from airport development.	Limited benefits to Green Belt outweighed by substantial drawbacks for users and LPAs. No change recommended.
Increased restrictions across sensitive areas.	√√ Supports protection of landscape character and heritage. √√ consistent approach to AONBs and National Parks.	XX Likely increase in no. of planning applications/notifications for limited no. of LPAs.	X need for more users to submit planning application/notifications in a limited no. of areas.	√√ improved protection from adverse impacts for most important areas.	Important benefits of greater protection for most sensitive areas outweighs modest drawbacks for users and limited no. of LPAs. Change recommended.

Table 35: continued

Proposed changes	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Restrict pd rights in SSSIs.	√/ supports biodiversity aims.	X possible small increase in planning applications/notifications for LPAs but many undertakers consult already.	X need for planning applications/notifications for some users but may encourage development away from these areas.	√/ increased protection for important ecological sites some of European importance.	Important benefits for nature conservation and policy support override modest impacts on users and LPAs. Change recommended.
Remove rights generally in world heritage sites.	√/ greater protection of heritage.	X blanket restriction could produce large increase in no. of planning applications for a small no. of LPAs.	XX need to submit planning application for large no. of users in a few areas but other restrictions (e.g. conservation area) may apply anyway.	√/ greater protection of heritage.	Important benefits to heritage offset by drawbacks to LPAs and users so that Article 4 Directions provide more targeted approach. Change recommended is use of Article 4 Directions.
Prior approval requirement in areas of archaeological interest.	√/ supports protection of heritage.	X possible small increase in planning applications/notifications for LPAs but some undertakers consult already.	X need for planning applications/notifications for some users but may encourage development away from such areas.	√/ increased protection for important and irreplaceable heritage sites.	Important benefits for heritage and policy support override modest impacts on users and LPAs. Change recommended.
Restrictions in flood risk areas.	√/ supports flood prevention and control of pollution aims.	XXX potential for substantial increase in notifications for many LPAs as well as EA.	XX need for notification of often minor works with potential for lengthy delays.	√/ may allow better control over flood prevention and pollution.	Important benefits for flood prevention and pollution control offset by potential for major increases in LPA and EA workloads. No change recommended without further study.

Table 35: continued

Proposed changes	Impacts on policy aims	Impacts on local planning authority administration	Impacts on users/beneficiaries of pd rights	Impacts on the consumer/third party interests	Overall assessment
Restrictions in airport public safety zones.	√√ Supports aims for air transport and air safety.	X Small increase in planning applications for limited no. of LPAs.	√√ supports airport operations and safety X need for small no. of users to make planning applications.	√√√ supports safety generally.	Benefits for safety override modest impacts on LPAs. Change recommended.
Height restrictions in airport Safeguarding areas.	√√ Supports aims for air transport and air safety.	XXX Substantial increase in notifications/planning applications for limited no. of LPAs.	√√√ supports airport operations and safety although few specific cases of harm found.	√√ supports airport operations and safety although few specific cases of harm found.	Benefits for safety override impacts on LPAs especially if notification procedure can be streamlined. Change recommended.
Controls to protect streetscape.	√√ Supports aims to protect urban character and design quality.	XX potential for initial large increase in notifications/planning applications but should reduce over time. X need to adopt Street Management Code.	X potential for more notifications/planning applications initially by undertakers but should reduce over time.	√√√ should lead to significant improvements to urban character and design quality, and protection of environmental improvement schemes.	Important benefits for streetscape/urban character outweigh possible initial burdens on LPAs and users which should reduce over time. Change recommended.
Controls on rural Leisure plots.	√√√ Supports aims to protect countryside and Green Belt.	√√ unlikely to produce significant increase in planning applications after policies clarified.	X will necessitate application.	√√√ Substantial benefit of protection of countryside and Green Belt. Prevents planning system being undermined.	Benefits for countryside and Green Belt protection greatly override impacts on users rights. Change recommended.

√ indicates positive impact from √ (low) to √√√ (high) X indicates negative impact from X (low) to XXX (high) - indicates neutral impact pd = permitted development

CHAPTER 40

Summary of recommendations

- 40.1 Based on the findings in the previous sections, the key changes proposed to the GPDO are summarised below.

PART 1: DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLING-HOUSE

- 40.2 Part 1 should be rationalised from 8 classes to 2 with a new Class A for '*development attached to a dwelling-house*' and Class B for '*development within the curtilage of a dwelling-house*'. This re-classification, together with redrafting in a simpler format, would address a number of problems and would involve replacing the volume control on extensions to one based on floorspace and distance from boundaries and reducing the proportion of the curtilage which can be covered by buildings to 25%. Use of a floorspace rather than a volume control would not alter the size threshold for extensions permitted. Additional controls would apply to extensions/alterations to dwellings in conservation areas and those in other sensitive areas.
- 40.3 Conditions attached to the two classes should cover:
- a. relating permitted development rights for new buildings/extensions to development which has been granted planning permission but not yet implemented, or which has been partially implemented;
 - b. requiring matching materials to the original dwelling-house;
 - c. development in Classes A or B in a conservation area not causing adverse impacts on design and the historic environment, on being assessed against a '*Conservation Area Management Code*' prepared nationally and then adapted/adopted locally, and supported by development plan policy. Only development complying with the Code would have permitted development rights;
 - d. where natural ground levels vary between sites, if any part of the building proposed comes within 2 metres of the boundary of the adjoining premises, the height to be measured from the lower level;
 - e. new buildings etc. under Class 2 being at least 3 metres from an adjoining dwelling-house;
 - f. requiring limited or non-opening translucent windows for any new windows in return frontages within a specified angle and distance where they overlook windows in a neighbouring property; and
 - g. any roof extension under Class A should not directly abut a party wall.

- 40.4 To address *Shimizu* issues, restrictions are proposed on the removal without like-for-like replacement of a bay window, chimney stack or porch within a conservation area.
- 40.5 A separate householder manual on Part 1 should be considered, taking a similar form to the ODPM's *Planning, A Guide for Householders, What you need to know about the Planning System* (2003).
- 40.6 To provide consistency and thus assist all users of both procedures, consideration should be given to making Part 1 permitted development rights consistent with the Building Regulations.
- 40.7 Further, but more restrictive options would be to either exclude dwelling-houses in conservation areas from either Classes A and B, or from just Class A, depending on the feasibility and operability of the 'Code' referred to above.

PART 2: MINOR OPERATIONS

- 40.8 Recommended changes are to:
- a. add conditions relating to sloping land and where natural ground levels change between adjoining properties/land holdings and on field/highway boundaries, the height of new development should relate to the lowest natural ground level;
 - b. define '*adjacent to the highway*' for the purposes of Part 2 to mean land within 3 metres from the back edge of the highway, as defined in Annexe 9 and clarify that this applies to means of enclosure running parallel to the highway as well as those 'end on' to it; the 1 metre height limit would apply to these areas;
 - c. limit the types of the materials used for '*means of enclosure*' to '*conventional materials*' and specifically exclude the use of waste materials;
 - d. amend Class B, to limit the length of a means of access and add a condition to allow only a temporary means of access to be provided to serve a temporary use;
 - e. ensure that railings on roof terraces/gardens/decking are controlled within Part 1;
 - f. make it clear that alterations involving demolishing and replacing a whole wall/enclosure, or creation of a gap in a front wall etc. to provide a means of access are not permitted development under Classes A and B adjacent to a highway in conservation areas;
 - g. restrict Class C (painting of buildings) in conservation areas and where a building is listed.

PART 3: CHANGES OF USE

- 40.9 No changes are proposed for this Part, which has been the subject of a separate review and consultation.

PART 4: TEMPORARY BUILDINGS AND USES

40.10 No changes are proposed for this Part, which was the subject of a separate review and consultation.

PART 5: CARAVAN SITES

40.11 Suggested changes are:

- a. the removal of permitted development rights in and adjacent to sensitive areas;
- c. limiting the numbers of caravans involved in activities and meetings organised by exempted organisations;
- d. a limit to the total number of meetings of less than 5 days that can occur in any year on one holding; and
- e. revision of Class A's reference to building and engineering sites, to include caravans used by construction workers on any compound relating to pipeline works.

40.12 A more radical change to be considered is to exclude all Class A rights for caravan sites for exempted organisations involving over 5 caravans on a site. It would then be necessary for the landowner to obtain planning permission for a permanent, intermittent caravan site use. Similarly, Class B could be excluded from a revised GPDO.

40.13 To reduce the scope for very wide interpretation by users, the GPDO User Guidance document should explain the relevant provisions of the Caravan Sites and Control of Development Act, 1960 in greater detail.

PART 6: AGRICULTURAL BUILDINGS AND OPERATIONS

40.14 The recommended changes are:

- a. exclude engineering operations (e.g. reservoirs) in areas of archaeological interest;
- b. create a separate Class for certain agricultural uses (possibly to include some intensive uses) on smaller landholdings e.g. of up to 20 ha., and otherwise abolish permitted development rights on holdings of up to 20 ha., thereby creating two new Classes;
- c. prevent indefinite repeated implementation of small scale permitted development rights on the same farm holding;
- d. change the prior approval procedure, to require all 'significant' (to be defined by area and type) engineering operations and excavations to be subject to prior notification;
- e. ensure that permitted development rights only apply to development on an agricultural holding *for the purposes of the agricultural undertaking* by requiring evidence of this as part of the prior notification submission;

- f. the floor area of the original farm buildings should be used as the basis for calculating permitted development rights, rather than the 465 m² flat rate;
- g. a condition of Part 6 should be that the external appearance of a building to be extended or altered should not be materially affected (or at least applying the '*no material increase in height*' conditions in Class B.2(a) to Class A);
- h. any reference to curtilage should relate to the curtilage of the original farm building(s), and a specified distance from them;
- i. control the length of farm tracks that can be provided (and restrict the provision of such tracks if to serve a temporary use);
- j. remove permitted development rights for '*the deposit of waste*' (from Part 6 Class B permitted development rights) and specifically exclude the importation of any waste material from engineering operations (in Class A). Conditions should refer also to waste materials moved on-site and delete reference to their use for provision of a hard surface.

40.15 The GPDO User Guidance document will need to provide very significant guidance on agricultural permitted development rights, particularly on assessing whether the proposal is development and is for the purposes of the agricultural undertaking; the interests of farmers and others being properly balanced; the development otherwise benefiting from permitted development rights; and the land being agricultural. The guidance should also advise on the level of detail of plans required for prior approval, and provide a checklist of other supporting information on how non-statutory Whole Farm Plans, particularly in sensitive areas, can assist both farmers and local authorities in achieving rural and design policy objectives simultaneously. Guidance should encourage the retention and re-use for agriculture of older buildings and otherwise for an alternative use.

40.16 Subject to further evidence that such measures are necessary, more radical and restrictive changes in addition to or instead of those above, intended to give more consistency with other commercial sectors, would be to:

- a. abolish permitted development rights for excavations, '*significant*' (to be defined by type and area) engineering operations, new buildings and '*significant*' alterations and extensions. Other permitted development rights not currently subject of prior approval should be reassessed, in terms of whether they are sufficiently minor to remain as permitted development rights, or whether they should be subject of prior approval procedures (e.g. hardstanding);
- b. require '*need*' specifically to be taken into account in the prior approval process;
- c. require planning permission for all but the most minor Part 6 permitted development rights in the National Parks and adjoining parishes, the Broads and other sensitive areas.

40.17 Where current permitted development rights were removed, provision could be made for reduced fees or fee exemptions for the first planning application made.

PART 7: FORESTRY BUILDINGS AND OPERATIONS

40.18 Recommended changes are to:

- a. apply the same restrictions on sizes of building extension and prior approval requirements in both AONBs and National Parks; and
- b. clarify that forestry visitor centres above a specified threshold, e.g. 1,000 m² in line with other Parts of the GPDO, are excluded from Part 7.

and to consider:

- requiring a similar restriction on size of forestry buildings to that in Part 6 but to apply only in AONBs and National Parks; and
- a condition requiring removal of redundant forestry buildings.

PART 8: INDUSTRIAL AND WAREHOUSING DEVELOPMENT

40.19 No substantial changes are proposed but improved interpretation should clarify that '*material effect on external appearance*' applies to a site as a whole, and consideration should be given to removing this limitation outside conservation areas and where a building does not front a highway. Other clarifications proposed are to explain how curtilage boundaries relate to roads on industrial estates and the description of development should be amended to reflect relevant Use Classes. Consideration should also be given to controlling extensions by height and floorspace rather than volume consideration.

PART 9: REPAIRS TO UNADOPTED STREETS AND PRIVATE WAYS

40.20 Recommended changes are to:

- a. require prior approval of Part 9 works in Article 1(5) land; and
- b. add a condition or improve interpretation to specifically exclude any widening or significant raising in levels of private ways as repairs or improvements.

PART 10: REPAIRS TO SERVICES

40.21 It is recommended that a condition be applied to require land to be reinstated, once the works have been completed, to its original condition or as otherwise agreed in writing with the local planning authority.

40.22 Subject to the success of other measures to control impacts of poor reinstatement, repairs to services by local highway authorities and statutory undertakers could be defined as development. These would then be permitted by an amended Part 10 of the GPDO but made subject to conditions requiring notification to the local highway authority and the reinstatement works being carried out to the satisfaction of the local planning authority.

PART 11: DEVELOPMENT UNDER LOCAL OR PRIVATE ACTS OR ORDERS

- 40.23 The only specific change proposed is to impose a height limit of 15 m for masts. Improved interpretation is also recommended within a User Guidance document to explain the context, purpose and application of these rights.

PART 12: DEVELOPMENT BY LOCAL AUTHORITIES

- 30.24 Recommended changes include:
- a. Part 12 rights for street furniture being made conditional on avoiding impacts on streetscape (assessed against compliance with a national Street Management Code). In addition, guidance should be provided in a User Guidance document to encourage consultation by local authority user departments and compliance with this code;
 - b. removing the rights for school development from Parts 12 and 32 and introducing a new Part of the GPDO covering school development only, with size limitations of 250m³, 4 m in height and no development within 20 m of the site boundary;
 - c. clarifying that Part 12 rights are available to County Councils as education authorities if school permitted development rights remain under this Part, and that these rights also apply to those carrying out works *'on behalf of the local authority'*; and
 - d. clarifying through interpretation that floodlighting, new car parks and fences over 2 m high are specifically excluded from Part 12 rights, while information boards and play equipment such as basketball nets and minor extensions of existing car parks (within a limit of perhaps 10%) are included.
- 40.25 Consideration could also be given to imposing height limits or otherwise restricting the scale of waste deposits under Class B.

PART 13: DEVELOPMENT BY LOCAL HIGHWAY AUTHORITIES

- 40.26 Consideration should be given to defining works within the highway as development in primary legislation, but then making these permitted development in the GPDO. These permitted development rights could then be made conditional on having no adverse impact on streetscape or pedestrian flow, with this being assessed with reference to the Street Management Code applying to the area. If the above change is not accepted, guidance should be provided in a GPDO User Guidance document to encourage consultation by highway authorities and compliance with the authority's own design guidelines on streetscape.
- 40.27 If highway works are redefined as *'development'* and made permitted development under Part 13, prior approval should be required on siting and design of highway works in National Parks and AONBs that are likely to have material effects.

- 40.28 Improved definitions or interpretation should be provided for terms such as *'highway'* and *'adjoining the boundary of an existing highway'* and consistent use made of the term *'highway'* rather than *'road'* where the same meaning is intended. Clarification is also required on the scope of *'improvement'* to a road, to make clear that this does not extend to adding an additional carriageway.

PART 14: DEVELOPMENT BY DRAINAGE BODIES AND PART 15: DEVELOPMENT BY THE ENVIRONMENT AGENCY

- 40.29 It is recommended that the interpretation is amended to clarify that improvement works that extend the footprint of a watercourse within specified very small size limits are covered by permitted development rights.
- 40.30 Consideration should also be given to combining Part 14 and Part 15 as separate classes (with unchanged restrictions) under a new single Part to cover the wider category *'Development for Drainage and Flood Protection'*.

PART 16: DEVELOPMENT BY OR ON BEHALF OF SEWERAGE UNDERTAKERS

- 40.31 Recommended changes are to:
- a. specifically allow small kiosk-type buildings for protecting equipment, subject to the same size limits as in Part 17 (E); and
 - b. amend interpretation/definition of *'aqueduct'* to clarify that it does not apply to sewerage operations.

PART 17: DEVELOPMENT BY STATUTORY UNDERTAKERS

- 40.32 Recommended changes include:
- a. permitted development rights for street infrastructure and furniture should be conditional on siting and external appearance that minimises any effects on pedestrian flow and visual impact;
 - b. setting a height limit of 15 metres for telecommunications masts permitted under Class A in sensitive landscape areas, with prior approval also needed on siting and appearance of all such masts;
 - c. clarify through interpretation that Class A rights extend rights to train and freight operating companies who lease operational land from Network Rail (or amend the definition of a railway undertaker within the Town and Country Planning Act 1990 as including these other undertakers);
 - d. clarify that *'industrial processes'* are excluded from Class B: Ports and consider restricting Class B rights within a specified distance of residential properties; and
 - e. include freestanding postal pouches as permitted development outside Article 1(5) land, subject to impact on streetscape.

PART 18: AVIATION DEVELOPMENT

40.33 The recommended changes are to:

- a. set time limits of 28 or 56 days for consultation on Class A operational developments;
- b. specify the relevant airports in the User Guidance document and clarify that piers and satellites are not subject to the floorspace extension limit on passenger terminals.

PART 19: DEVELOPMENT ANCILLARY TO MINING OPERATIONS

40.34 Recommended changes are to:

- a. specifically exclude mineral processing plants from permitted development rights in Part 19;
- b. set a 56 day (or shorter) time limit for prior approval determination; and
- c. provide better interpretation on terms such as '*materially affected*' in relation to the external appearance of a mine.

PART 20: COAL MINING DEVELOPMENT BY THE COAL AUTHORITY/OPERATORS

40.35 No changes are proposed.

PART 21: WASTE TIPPING AT A MINE

40.36 No changes are proposed.

PART 22: MINERAL EXPLORATION

40.37 No changes are proposed.

PART 23: REMOVAL OF MATERIAL FROM MINERAL WORKING DEPOSITS

40.38 No changes are proposed. Consideration could be given, if the Article 7 procedure proves ineffective or gives rise to unjustified compensation claims, to restricting Part 23 rights within National Parks and AONBs.

PART 24: DEVELOPMENT BY TELECOMMUNICATIONS CODE SYSTEM OPERATORS

40.39 Since this study was not to review the principles of Part 24 and only examine the scope for simplification, only the following suggested changes could be considered:

- a. provide improved definitions of the terms '*wall*' and '*roof slopes*'; and provide a clearer definition of '*antenna*', which confirms whether mountings and brackets form part of the antenna;
- b. remove the restriction on placing antenna on buildings facing a highway, and if this is retained, only prior approval should apply;
- c. consider extending Part 24 rights to broadcasters licensed under the Broadcasting Act 1981;
- d. while Part 24 was considered too complex to allow general use of illustrations for explanation, differences between a pole mount and a mast on a building should be clarified by an illustration within the GPDO User Guidance document.

PART 25: OTHER TELECOMMUNICATIONS DEVELOPMENT

- 40.40 Suggested changes should remove the differentiation on size limits and siting under 15 metres in height between a terrestrial microwave antenna and a satellite antenna, while maintaining different conditions applying to buildings or structures above and below 15 metres in height to address the potential for visual impact.

PART 26: DEVELOPMENT BY THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION

- 40.41 Following consultation with English Heritage, the removal of this little-used Part should be considered and, if retained, permitted development rights should be limited to works required to stabilise ground conditions of buildings.

PART 27: USE BY MEMBERS OF CERTAIN RECREATIONAL GROUPS

- 40.42 No changes are recommended but an up to date list of relevant groups in the GPDO User Guidance document should be provided.

PART 28: DEVELOPMENT AT AMUSEMENT PARKS

- 40.43 No significant changes are proposed but consideration should be given to amended interpretation to clarify that Part 28 includes theme parks, that booths and stalls can include hot food sales and that '*plant*' can include platforms for rides or covers for users.

PART 29: DRIVER INFORMATION SYSTEMS

- 40.44 It is recommended that prior approval be required for the siting and design of masts within sensitive areas such as National Parks, AONBs and conservation areas.

PART 30: TOLL ROAD FACILITIES

40.45 After consultation with operators, removing Part 30 rights should be considered, unless it is anticipated that the development of more toll roads will be promoted in future and that this will not be under legislation that specifically permits toll road facilities.

PART 31: DEMOLITION OF BUILDINGS

40.46 Recommended changes include:

- a. extending demolition control to apply to buildings identified on local lists and to make this permitted development subject to planning permission for redevelopment having been granted and a contract for construction having been let;
- b. Controlling demolition of sports facilities in a similar way to that for locally listed buildings; this reflects current Government proposals;
- c. deleting Class B to prevent removal of front garden walls/enclosures within conservation areas; this reflects current Government proposals.

40.47 Consideration could also be given to:

- d. amending the exclusions from demolition control in Circular 10/95 so that all demolition is permitted or not through the GPDO; and
- e. outside conservation areas, making changes to control demolition, without replacement, of front walls and other means of enclosure to front gardens.

PART 32: SCHOOLS, COLLEGES, UNIVERSITIES AND HOSPITALS

40.48 The recommended changes are to:

- a. relocate school-related development from Part 32 to a new Part of the GPDO dealing specifically with schools;
- b. increase size limits of buildings within university, college and hospital sites from 250 m³ to 1,000 m³, subject to a specified distance from site boundaries but not within Article 1(5) land; and
- c. amend the interpretation of playing fields.

PART 33: CCTV

40.49 Recommended changes include:

- a. reducing size limits for CCTV cameras; and
- b. permitting pole mounted cameras within sites, subject to a 20 metre set back from curtilage boundaries.

ADDITIONAL PERMITTED DEVELOPMENT RIGHTS

- 40.50 Provision of permitted development rights should be considered for:
- a. minor works required for waste management, such as venting wells;
 - b. development, within specified limits, within military sites to allow for any future loss of Crown Immunity; and
 - c. various site investigation works, such as digging temporary trenches or bore-holes to investigate contamination or ground conditions generally.
- 40.51 No new permitted development rights are proposed to apply to park homes.

ENTITLEMENT TO PERMITTED DEVELOPMENT RIGHTS

- 40.52 It should be clarified that permitted development rights can apply to those acting on behalf of the specified undertaker in the GPDO.

ARTICLE 4 DIRECTIONS

- 40.53 Recommended changes include:
- a. providing best practice guidance on the preparation of Article 4 Directions;
 - b. restricting through the GPDO the permitted development rights most commonly removed by Article 4 Direction, but with local relaxation possible through local development orders;
 - c. removing the right to compensation in respect of development refused planning permission after permitted development rights are withdrawn; and
 - d. Consider the need for a new type of Article 4 Direction not requiring Secretary of State approval and to apply to development outside conservation areas where rapid response is needed e.g. rural leisure plots.

OTHER ARTICLES

- 40.54 Recommended changes include:
- a. within each relevant Part of Schedule 2, repeating, or least making reference to, any special restrictions imposed under other Articles, such as Articles 3 and 6;
 - b. adding a general requirement to remove redundant equipment/structures provided under permitted development rights; and
 - c. adding a general requirement to restrict or require notification of permitted development rights near airports for safeguarding purposes, as explained below.

PRIOR APPROVAL PROCEDURES

- 40.55 The prior approval procedure should be amended generally to:
- a. provide fixed, longer periods (e.g. 56 days) for local authorities to respond to applications for prior approval;
 - b. establish a specific time limit where such limits do not exist;
 - c. require all details on siting, design and materials which could be asked for by the local planning authority within a specified period to be submitted at the start of the notification period; this reflects current practice by some undertakers;
 - d. allow for public consultation on the prior approval details;
 - e. increase the fee to a level equivalent to that for a planning application; and
 - f. provide clear guidance on the prior approval procedure in a User Guidance document, including what conditions can be applied, the remedies available to the user (including any right of appeal) and how local planning authorities should operate the procedures and undertake consultation.

AIRPORT SAFEGUARDING

- 40.56 Recommended changes are to:
- a. require prior notification to local planning authorities of any development exceeding a specified height (or the height of the highest structure on the site) within a specified distance of an aerodrome boundary and amend Article 3 to remove permitted development rights for development that exceeds relevant height limits in the safeguarding plan; and
 - b. amend Article 3 to restrict permitted development rights across all relevant Parts for development that would lead to more people living, working or congregating within defined Public Safety Zones at the ends of airport runways.

SENSITIVE AREAS

- 40.57 For sensitive areas, the proposed changes are to:
- a. replace references to Article 1(5) or 1(6) land with the specific types of areas where a restriction applies, e.g. AONB, National Park etc.;
 - b. amend Article 3 to require prior approval for permitted development works that involve significant disturbance of ground within limited areas of archaeological interest, effectively applying only to areas designated as Scheduled Ancient Monuments;

- c. require prior approval, in a carefully targeted way, for certain works by statutory undertakers and highway authorities within sensitive areas such as AONBs and National Parks; and
- d. amend Article 3 to remove permitted development rights for works within SSSIs.

RURAL LEISURE PLOTS

- 40.58 To address problems with proliferation of fencing etc and other development on small, speculative plots in rural areas, the recommendation is to remove within Article 3 the permitted development rights under at least Parts 2, 4, 5, 6 and 9 with respect to *‘previously undeveloped land or undeveloped land that was formerly (but no longer) part of an agricultural holding or in agricultural use’*. Consider also introducing a new type of Article 4 Direction to address this issue without the need for approval by the Secretary of State.

IMPROVING INTERPRETATION AND USER FRIENDLINESS

- 40.59 Recommended changes include:
- a. re-drafting of the GPDO in a legally robust but simpler style, in the positive rather than the negative and avoiding use of double negatives;
 - b. making available a composite, up to date version of the GPDO via the Planning Portal;
 - c. providing new or improved definitions or interpretation for all terms that have given rise to problems in the past, based where possible on case law and definitions found in relevant legislation and making clear any specific exclusions;
 - d. all definitions being accessible in a single location with a reference superscript on each term so defined but with key definitions to be repeated within the relevant Parts;
 - e. rationalising and deleting little used Parts where possible and where giving no real benefit but focus on making each Part as self-contained as possible, in terms of cross references and definitions.

REDUCING CHOICE OF PERMITTED DEVELOPMENT RIGHTS

- 40.60 Recommendations are made within each Part of the GPDO to address the issue of there being a choice of utilising another Part of the GPDO to carry out works restricted by one Part. This applies among others to Parts 6 and 9, Parts 12 and 32 and Parts 11 and 17. Changes are made only where such choice causes adverse effects and in such cases restrictions are proposed under relevant Parts.

GPDO USER GUIDANCE DOCUMENT

- 40.61 It is recommended that a frequently updated GPDO *'User Guidance document'* be made available over the Planning Portal to help interpretation of the GPDO and keep it up to date and include:
- a. an explanation of the purpose of different parts of the GPDO;
 - b. guidance on checking whether proposals are development or not;
 - c. references to case law;
 - d. simple explanation of specific rights with illustrated examples and flowcharts where appropriate;
 - e. guidance on the operation of prior approval procedures and conditions that can be applied;
 - f. guidelines on good practice for carrying out permitted development to comply with policy aims; and
 - g. clarification of the appropriateness of imposing conditions, or seeking Section 106 agreements, to remove permitted development rights on new operational land and on mining sites.

CONFIRMATION OF PERMITTED DEVELOPMENT RIGHTS

- 40.62 The GPDO User Guidance document should advise on best practice for local planning authorities to deal with requests for written confirmation that permitted development rights apply to a particular situation; subject to consultation, an application for a Certificate of Lawfulness (CLOPUD or CLEUD), or some simplified application along these lines with a reduced fee, should be requested in such cases.

CHANGES TO PRIMARY AND OTHER LEGISLATION

- 40.63 The following, possibly longer term, recommendations would involve changes to primary legislation:
- removal of the entitlement to compensation when permitted development rights are removed through Article 4 Directions;
 - redefining development in Section 55 of the Town and Country Planning Act to include works by statutory undertakers and highway authorities within the highway;
 - amending the Demolition Direction to impose demolition control on locally listed buildings, and enhance the status of the local list;
 - if required, amending the definition of a railway undertaker within the 1990 Town and Country Planning Act to include other undertakers such as train and freight operating companies.

FURTHER RESEARCH REQUIRED

- 40.64 Areas where further investigation is required before changes are made include:
- a. establishing appropriate size limits for permitted development in airport safeguarding areas;
 - b. the effects or abuse of certain agricultural permitted development rights and the prior notification procedure, and the minimum size of agricultural holding which can be viably operated;
 - c. the need for control over demolition of front garden walls outside conservation areas; and
 - d. the need for restrictions/notifications to the Environment Agency of permitted development rights within areas liable to flood.