

Decision Session- Executive Member for Economy and Strategic Planning

Report of the Head of Development Services

Permitted Development Rights for Solar and Photovoltaic (PV) Panels

Summary

1. Permitted Development Legislation exists to grant certain rights for varying types of development to be undertaken without the requirement to obtain formal Planning Permission from the Local Planning Authority (LPA). This includes the installation of Solar and Photovoltaic (PV) Panels on both domestic buildings (dwellinghouse or block of flats) and buildings other than a dwellinghouse or block of flats.
2. In most cases, given the provision of permitted development rights, residents and businesses in York would be able to install Solar and Photovoltaic Panels without requiring formal planning permission. Utilisation of Permitted Development rights to install PV panels is something the Council is keen to encourage the usage of. This report sets out the criteria for PV to be classed as permitted development in order to assist with the installation of PV's in appropriate locations throughout the city.
3. The background section of this report highlights the relevant elements of national legislation which apply in York and the limitations which they then place upon development of this nature.

4. The exact nature and extent of permitted development rights can vary and they cover a very wide range of development types. They can allow a householder to erect a garden shed within their own garden through to granting rights to statutory undertakers such as BT to install the street cabinets which provide Broadband infrastructure.
5. Those parties afforded permitted development rights can in most cases exercise them at their own free will. However in some cases a developer must notify the LPA prior to them undertaking the works via the Prior Notification process.
6. In all cases the development permitted is subject to strict conditions and limitations which must be adhered to by those seeking to exercise permitted development rights. Failure to adhere the relevant conditions and limitations would mean that the works undertaken would not constitute permitted development and would therefore require the benefit of formal planning permission from the LPA. These conditions act as thresholds on the overall scale of a development.
7. In instances where these thresholds are exceeded it does not mean that the development would be unacceptable in planning terms; it simply means the development requires the benefit of planning permission. In such circumstances any formal planning application would be assessed in accordance with the provisions of prevailing National and Local Planning Policies; such as those contained within the NPPF and Draft Local Plan and any relevant material considerations which may exist.
8. In 2018 the Council received 18.no applications which included Solar or Solar PV equipment either as a standalone proposal or which were incorporated into a larger proposal and planning permission was granted in all these cases.
9. Where permission is required for the installation of PV's as outlined above this could be due to a number of factors of which York Historic Character is one of these. Each planning application for PV's will be considered on its own merits and its impact on both

the property and surrounding area which will vary on a case by case basis.

10. PV's are one of a number of technologies available to reduce the carbon impact of buildings and the Planning Department will work with applicants to wherever possible find an acceptable solution to reducing a buildings carbon footprint.
11. The prevalence of Solar and Solar PV panels across the city relative to the number of applications considered by the Council highlights the scope of permitted development rights in respect of such equipment.
12. In addition to this Policy CC1 of the Draft Local Plan promotes the provision of Renewable and Low Carbon Energy Generation and Storage. Policy CC2 promotes Sustainable Design and Construction of New Development. These policies in addition to the provisions of the NPPF which promotes sustainable development at its core are material to the assessment of all planning applications submitted to the LPA. It is these policies which are utilised to promote and secure features such as renewable energy in new development.

13. Example of PV installation within York (installed under permitted development rights)



Recommendation

14. The Executive Member is asked to:
- a. Note the contents of this report for information purposes only.

Background

15. Permitted Development Rights are national legislation and apply in the same manner across England for all LPAs; similar legislation exists for Scotland and Wales.
16. Permitted Development rights permit the use of Solar Thermal and Solar PV equipment. The difference between the two is based around how the subsequent electricity is generated from the panel. Solar Thermal utilises radiation from the sun to heat a fluid within

the panels which in turn is then utilised to generate a current. Solar PV relies on the Photovoltaic effect.

17. Permitted Development Rights are set out within The Town and Country Planning (General Permitted Development) (England) Order 2015. (GPDO).

18. Permitted Development Rights relating to the provision of Solar Panels, is contained within Part 14 (Renewable Energy) of the GPDO. Specifically, in respect of Solar Panels, the following Classes of Part 14 are relevant:

Class A – installation or alteration etc of solar equipment on domestic premises;

Class B – The installation, alteration or replacement of stand-alone solar for microgeneration within the curtilage of a dwellinghouse or a block of flats;

Class J – The installation, alteration or replacement of-
Microgeneration solar thermal equipment on a building;
Microgeneration solar PV equipment on a building; or
Other solar PV equipment on the roof of a building,
Other than a dwellinghouse or a block of flats.

Class K – The installation, alteration or replacement of stand-alone solar for microgeneration within the curtilage of a building other than a dwellinghouse or a block of flats.

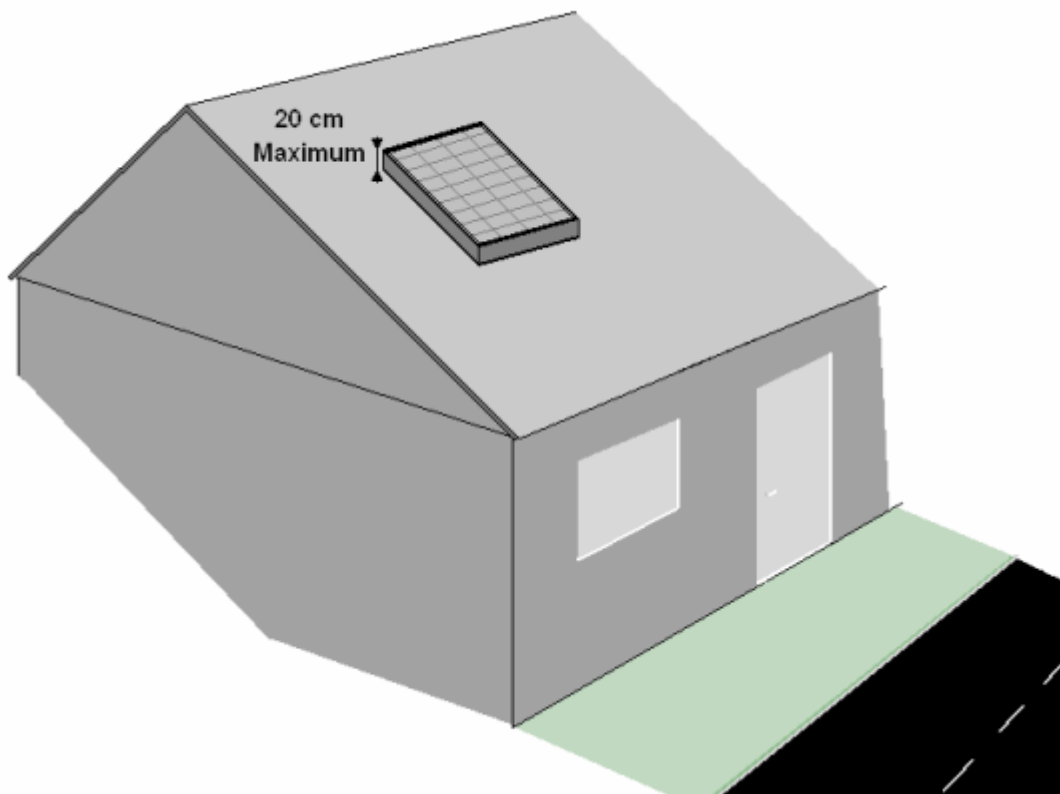
Development on a Dwellinghouse or Block of flats

19. Class A of Part permits the installation, alteration or replacement of microgeneration solar PV or solar thermal equipment on-

- a. A dwellinghouse or a block of flats; or
- b. A building situated within the curtilage of a dwellinghouse or a block of flats.

20. However the undertaking of these works is subject to the following limitations being adhered to:

- a. The panel cannot protrude more than 20cm beyond the plane of the wall or roof slope when measured perpendicular with the external surface of the wall or roof.
- b. The highest part of the equipment cannot be higher than the highest part of the roof (excluding any chimney).
- c. In the case of any land within a designated Conservation Area or a World Heritage Site the equipment cannot be installed on a wall which fronts a highway.
- d. The equipment cannot be installed on a site designated as a scheduled monument.
- e. The equipment cannot be installed on a building within the curtilage of a dwellinghouse or block of flats if the dwellinghouse or block of flats is a listed building.



21. In addition to the specified limitations the following conditions would also need to be complied with in all cases:

- a. The equipment is, so far as practicable, sited so as to minimise its effect on the external appearance of the building.
- b. The equipment is, so far as practicable, sited so as to minimise its effect on the amenity of the area; and
- c. The equipment is removed as soon as reasonably practicable when no longer needed.

22. It should be noted that the above relates to single dwellings and blocks of flats and not mixed used building, flats associated with use other uses or flats that form part of buildings with multiple uses.

23. Class B of Part 14 permits the installation, alteration or replacement of stand-alone solar for microgeneration within the curtilage of a dwellinghouse or block of flats. This is subject to the following limitations:

- a. In the case of stand alone solar, there can only be 1.no stand alone installation within the curtilage.
- b. The stand alone solar cannot:
 - i. Exceed 4m in height;
 - ii. In the case of land within a Conservation Area or which is a World Heritage site, the stand alone solar cannot be installed so that it is nearer to any highway which bounds the curtilage than the part of the dwellinghouse or block of flats which is nearest to that highway.
 - iii. Be installed within 5m of the boundary of the curtilage.
 - iv. Be installed within the curtilage of a Listed Building.
 - v. Be installed on site designated as a scheduled monument.
- c. The surface area of the panels forming part of the stand alone solar would exceed 9m² or any dimension of its array (including the housing) would exceed 3m.

24. As was the case with earlier classes, Class B also requires that the stand alone solar is, so far as practicable, sited so as to minimise its effect of the amenity of the area and that it is removed as soon as reasonably practicable when no longer needed.

Development on buildings other than a dwellinghouse or block of flats

25. Classes J and K of Part 14 provide permitted development rights for the installation of solar equipment on buildings and land that are not dwellinghouses or flats.
26. Class J permits the installation of solar thermal and solar PV equipment on a building or solar PV equipment on a roof of a building that is not a dwellinghouse or block of flats.
27. Development under Class J requires that:
 - a. The equipment cannot be installed on a pitched roof where it would protrude more than 20cm beyond the plane of the roof slope when measured from the external perpendicular surface of the roof slope.
 - b. When installed on a flat roof the equipment cannot stand higher than 1m above the highest part of the roof (excluding any chimney).
 - c. The equipment cannot be installed within 1m of the external edge of the roof.
 - d. In the case of a building situated on article 2(3) land (National Parks, Areas of Outstanding Natural Beauty and Conservation Areas) the equipment cannot be installed on a roof slope which fronts a highway.
 - e. The equipment cannot be installed on a site designated as a scheduled monument.
 - f. The equipment cannot be installed on a listed building or within the curtilage of a listed building
28. However in respect of the provision of Solar Equipment on a building (excluding a roof) the following conditions must be adhered to:
 - a. The equipment when installed on a wall cannot protrude more than 20cm beyond the plane of the wall.
 - b. The equipment cannot be installed on a wall within 1m of a junction of that wall within another wall or with the roof of the building.

- c. In the case of a building situated on article 2(3) land (National Parks, Areas of Outstanding Natural Beauty and Conservation Areas) the equipment cannot be installed on a roof slope which fronts a highway.

29. There is also a restriction on the amount of electricity that can be generated from an installation. This restriction on relates to Solar PV equipment; however the installation of any Solar PV equipment either on a building or a roof cannot exceed 1 Megawatt.

30. Development under Class J is also subject to conditions which requires the equipment to be sited, so far as practicable, so as to minimise its effect on the external appearance of the building and amenity of the area. It is also necessary to remove the equipment when it is no longer needed.

31. In the case of the solar equipment being installed on the roof of building that is not a dwellinghouse or flat the developer is obliged to apply to the LPA for a determination as to the whether the prior approval of the authority is required as to the design or external appearance of the development, in particular the impact of glare on occupiers of neighbouring land. The prior approval requirements are discussed later in this report.

32. Class K permits the installation, alteration or replacement of standalone solar for microgeneration within the curtilage of a building other than a dwellinghouse or a block of flats. Subject to the following limitations:

- a. The installation cannot result in more than 1.no installation of standalone solar within the curtilage of a building.
- b. Any part of the installation cannot:
 - i. Exceed 4m in height;
 - ii. Cannot be installed on any Article 2(3) land, be installed so that is it nearer to any highway which bounds the curtilage than the part of the building which is nearest to the highway

- iii. Cannot be installed within 5m of the boundary of the curtilage
- iv. Cannot be installed within the curtilage of a Listed Building
- v. Cannot be installed on a site designated as scheduled monument.
- vi. Cannot have a surface area which would exceed 9m² or have any dimension (including any housing) which would exceed 3m.

33. As with previous Classes conditions also require that the equipment, so far as practicable, be sited so as to minimise its effect on the amenity of the area and that the equipment be removed when it is no longer needed.

Prior Approval Process

34. In cases where Solar PV Equipment is to be installed on the roof of a building that is not a dwellinghouse or flat the developer is first required to apply to the LPA for a determination as to whether Prior Approval is needed.

35. The prior approval process is utilised in a number of other circumstances such as the Larger House Extensions, Agricultural Buildings the change of use from Offices to residential. The process is perhaps best characterised as being a 'light touch' planning application. Developers and the LPAs have a very prescriptive and defined process to follow in terms what information must be submitted and what factors the LPA can consider. As minimum the developer must provide:

- a. A written description of the proposed development;
- b. A plan indicating the site of the proposed development;
- c. The developers contact address; and
- d. The developers email address if the developer is content to receive communications electronically.

36. The process also involves a public consultation process allowing third parties to comment on the proposals before they commence. The extent of this consultation is also clearly defined. The LPA is obliged to advertise the application either via letter only to adjoining owner or occupier or by site notice posted in at least one place on or near the land to which the application relates. Site notices and letters provide a 21 day period in which third parties can make comments.
37. The LPA has the ability to refuse any such prior approval application in instances where:
- a. The proposed development does not comply with the conditions, limitations or restrictions contained within Class J; or
 - b. The developer has provided insufficient information to enable the LPA to establish whether the proposals would comply with the conditions, limitations or restrictions contained within Class J.
38. In assessing and determining an application of this nature the LPA can require an applicant to submit information as the LPA may reasonably require in order to determine the application. Whilst this provides the LPA with a very broad spectrum of information they could request, over and above that of the basic requirements set out within Part 14, in practice information would only be sought when there is a material reason for doing so. For example if an array was to be installed on the roof of a building it would be justified to request elevation plans which show the proposed development within the context of the whole building.
39. The LPA must also, in assessing such applications, take account of any representations made to them as a result of the site notice or neighbour notices being served and have regard to the NPPF so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

40. Therefore, for example, were the site located within the Green Belt the LPA would have to have regard to Green Belt policies within the NPPF.
41. The GDPO has traditionally been a very binary set of rules. A development would either be permitted development or wouldn't be and require the benefit of formal planning permission. However the use of the Prior approval process and the requirement to have regard to the NPPF does introduce a degree of subjective assessment to proposals. This could be seen as advantageous as it allows for the particular constraints or limitations of the actual application site to be considered along with other relevant material matters. However it can also raise risks simply by the fact it requires a subjective element of assessment.
42. Any development proposed under a Prior Approval submission cannot commence until one of the following has occurred:
- a. The applicant has received written notice from the LPA of their determination as to whether Prior Approval is required.
 - b. The applicant has received written notice from the LPA giving Prior Approval.
 - c. The expiry of 56 days following the date on which the application was received by the LPA with the LPA notifying the applicant as whether prior approval is given or refused.
43. In the event of a Prior Approval application being refused by the LPA the development does retain a right of appeal over any such decision in the same manner they do with other planning applications.
44. Since 2015 the LPA has received 2.no Solar Prior Notification applications. Applications of this nature do attract a statutory application fee; currently £96 at the time of preparing this report.

So far as practicable

45. The term 'so far as practicable' is used at numerous points within the legislation. This introduces an element of subjective assessment in the process of determining whether a particular scheme would either be permitted development or require the benefit of planning permission.
46. There is no explicit definition of what is and is not 'practicable'. Indeed documented appeal decisions on the subject do vary.
47. In practice this could mean that if a householder were to install panels on the roof of their house and those panels covered all available roof space the LPA could be justified in taking the view that no efforts have been made to seek to minimise the visual impact of the installation on the amenity of the area; and as a result the installation would not be permitted development.
48. In all cases it would be necessary for the decision maker to make a judgement based on the information available and factors pertinent to a particular case.

Consultation

49. This report is for the Executive Member therefore no consultation has taken place regarding the contents of the report.

Options

50. The Executive Member is asked to:
 - a. Note the contents of this report.

Council Plan

51. The Council priorities for Building strong Communities and Protecting the Environment are relevant to Development Management function.

Implications

- **Financial** There are no financial implications
- **Human Resources (HR)** There are no HR implications
- **Equalities** There are no equalities implications
- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** There are no property implications
- **Other** There are no other implications

Risk Management

52. There are no known risks

Contact Details

Author:

Chief Officer Responsible for the report:

Author's name

Neil Ferris

Becky Eades

Corporate Director of Economy and Place

Head of Development Services

Tel: 01904 552814

Report **Date** 08/10/19

Approved

Mark Baldry

Development Management

Officer

Tel: 01904 552877

Wards Affected:

All

For further information please contact the author of the report

Background Papers

None

Annexes

None

List of Abbreviations Used in this Report

LPA – Local Planning Authority

GPDO – General Permitted Development Order

Article 2(3) – Land located within a designated National Park, Area of Outstanding Natural Beauty or Conservation Area.