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 dwellinghouse 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;
difficulty in determining whether a formerly detached or semidetached property can become a terraced house;

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;

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;

since the 50% coverage limit applies to the whole curtilage, dwellings with large front gardens can build over almost all a small rear garden;

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;

the omission of LPG tanks from permitted development rights when oil tanks are permitted;

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;

conditions on satellite dishes are not adhered to, leading to a proliferation; and

it is impossible to enforce removal of redundant dishes.

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.

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

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.

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 review 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


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 household 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 dwellinghouse’ 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.