

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT: WELSH GOVERNMENT CONSULTATION DOCUMENT: PROPOSED ADDITIONAL PERMITTED DEVELOPMENT RIGHTS FOR ELECTRONIC COMMUNICATION CODE OPERATORS (facilitating Broadband roll-out)

Purpose of Report

1. To inform members of a Welsh Government Consultation regarding proposed additional permitted development rights for electronic communications code operators
2. To endorse the recommended response

Background

The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) lists those developments and changes of use that are permitted development and as such do not require a formal planning application. These are known as permitted development rights (PDRs).

Part 24 of this document confers permitted development rights subject to certain conditions and limitations for certain development by operators of electronic communication networks.

The Welsh Government is consulting on proposed changes to Part 24 to facilitate the provision of infrastructure to ensure access to next generation broadband at premises. This is one of the Welsh Government's top priorities and it has committed to eliminating mobile not spots, a number of which are situated in the National Parks areas.

The consultation is split into four main areas; telecommunications infrastructure in Wales, fixed broadband roll-out through street cabinets and fixed lines, mobile broadband roll-out and the proposed modifications to current permitted development rights and related issues. The consultation also includes a Partial Regulatory Impact Assessment.

The Proposed Changes

The consultation sets out proposed changes to the above parts of the GPDO and explains that the changes are intended to provide a first class digital infrastructure in Wales which in turn will support economic growth. Broadband coverage lags behind in Wales and to overcome this, the Welsh Government considers that the policy and regulatory environment needs to be as supportive as possible of investment in broadband infrastructure, in particular in not-spots and rural areas. This provision requires new fibre optic cables throughout the network connected to street cabinets and

in turn to individual premises. The re-use of existing telegraph poles and supports is encouraged but new supports will also be required. In addition, high fibre optic networks are needed for broadband coverage to mobile devices and the new 4G coverage will require significant upgrades to the infrastructure to provide this.

At present, the installation of electronic communications apparatus such as street cabinet boxes requires 'prior notification' to the Local Planning Authority where the development would be situated on Article 1(5) land (National Park areas, AONBs and Conservation Areas) or in SSSIs and on other land specified apparatus such as masts are also subject to the prior notification procedure.

This procedure is similar to that for agricultural development where the Authority can seek further information on siting and design, and where this cannot be resolved satisfactorily can (but rarely do) refuse the proposal. This process is seen by the Welsh Government as onerous in relation to electronic communication infrastructure, particularly where the infrastructure crosses administrative boundaries and separate, individual applications for different supporting apparatus are required. The prior notification process also requires ownership details and publicity/consultation similar to a planning application which is seen as cumbersome and unwieldy.

This consultation proposes a new streamlined procedure where the developer will send details of the proposal in a National Park to the NPA, the County Council for the area and to Natural Resource Wales, for a 21 day period for those organisations to make representations. Where those bodies make representations, the developer will be required to 'have regard' to them. This procedure would apply to cabinets of a certain size, overhead supply cabling of a certain size and the supports for such cabling. This new streamlined approach would apply for a period of 5 years.

The consultation also proposes changes to the thresholds under which electronic communications apparatus trigger the prior notification process. The changes relate to the height of an antenna mounted on a building, the height of the antenna itself, the number of antenna allowed on a building, and the introduction of permitted development rights on Article 1(5) land for a limited number of small cell antenna on existing structures/buildings.

In addition the consultation proposes increasing the size of dish antenna on buildings under and over 15 metres in height and a new provision for Article 1(5) land allowing additional antenna on a building or structure subject to prior notification. At present, any antenna on Article 1(5) land requires permission unless it is a like for like replacement. The consultation seeks views on these changes and whether additional criteria relating to siting should be applied in these cases.

The intention of the changes is that they apply for five years to accord with the mobile broadband coverage obligation, and views are sought on this intention. Views are also sought on specific issues relating to definitions, clarity on wordings, and whether these should be done through planning policy guidance or Codes of Best Practice.

The consultation document is available for members should they wish to read this in full.

Response to the Consultation

The Welsh Government has requested feedback on twelve questions and the questions and recommended responses are listed at Appendix A.

The consultation to simplify the processes to facilitate improved electronic communication is welcomed in principle as it is recognised that these upgrades are essential to promote business and the economic growth of the area, and particularly for those areas that are currently not-spots or have limited electronic communication. However, this must be balanced against the need to ensure that the first purpose of the National Park Authority is not compromised through inappropriate or cluttered provision of this infrastructure and which can have a detrimental impact on the special qualities of the National Park.

The changes to the thresholds for the size and quantities of antenna and associated infrastructure are accepted in principle but on the provision that the specific criteria in relation to primary frontages and siting on buildings are included in the same manner as in the current Part 24 of the GPDO. It is also considered that the prior notification system should be introduced for the suggested enlargement of dish antenna dimensions.

There is however concern at the introduction of the “fast track” system suggested for proposals on Article 1(5) land in lieu of the current prior notification procedure. This concern arises from the fact that this procedure is not consistent with other parts of the GPDO (including this one as it will remain for parts of this section) where prior notification is required and which enables a simplified system to operate but enables LPAs to have control over siting and design in specific areas designated for their special qualities.

It is not clear from the consultation how developers would ‘have regard’ to concerns raised by LPAs in these situations and whether there is a statutory requirement for them to address the concerns raised. The procedure would have no weight without some requirement for developers to adhere to the comments raised.

It is suggested that the current prior notification procedure remain but with amendments to facilitate easier submissions (i.e. a whole scheme approach for an overhead line rather than pole by pole, and lesser requirements on ownership, neighbour and consultation arrangements). This would enable a more consistent yet streamlined approach to facilitate development but with appropriate mechanisms in place for LPAs to require changes where proposals are considered to be inappropriate. This approach would also negate the need for the temporary period to be applied and for the new rights to apply in perpetuity.

Recommendation

That Members ENDORSE the proposed response as set out in Appendix A.

References – Welsh Government Consultation Document – Proposed Additional Permitted Development Rights for Electronic Communication Code Operators (facilitating Broadband roll-out), 29th July 2013.

(For more information contact Vicki Hirst, Head of Development Management).

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Proposed additional permitted development rights for Electronic Communications Code Operators
Consultation reference: WG 17476

Consultation Response Form: Proposed additional PDRs for Code Operators

We want your views on our proposals for proposed modifications (by way of revisions or additions) to the current permitted development rights set out in Part 24 "Development by Electronic Communications Code Operator (Wales)". Your views on the draft Regulatory Impact Assessment are also sought.

Please submit your comments by 31 October 2013.

If you have any queries on this consultation please e-mail planconsultations-e@wales.gsi.gov.uk
or telephone N Butler on 029 2082 3585.

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Proposed additional permitted development rights for Electronic Communications Code Operators
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Proposed additional PDRs for Code Operators		
Date of consultation period: 29 July 2013 to 31 October 2013		
Name	Vicki Hirst	
Organisation	Pembrokeshire Coast National Park Authority	
Address	Llanion Park Pembroke Dock Pembrokeshire SA72 6DY	
E-mail address	vickih@pembrokeshirecoast.org.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	X
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Q1	Do you agree that the consultation procedures described in a) to c) of paragraph 5.8 above should in Wales be the minimum statutory requirement ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	X

Comments:

There is concern at the introduction of the "fast track" system suggested for proposals on Article 1(5) land in lieu of the current prior notification procedure. This concern arises from the fact that this procedure is not consistent with other parts of the GPDO where prior notification is required and which enables a simplified system to operate but enables LPAs to have control over siting and design in specific areas designated for their special qualities. It is not clear from the consultation how developers would 'have regard' to concerns raised by LPAs in these situations and whether there is a statutory requirement for them to address the concerns raised. The procedure would have no weight without some requirement for developers to adhere to the comments raised. It is suggested that the current prior notification procedure remain but with amendments to facilitate easier submissions (ie a whole scheme approach for an overhead line rather than pole by pole, and lesser requirements on ownership, neighbour and consultation arrangements.). This would enable a more streamlined approach to

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facilitate development but with appropriate mechanisms in place for LPAs to require changes where proposals are considered to be inappropriate. This approach would also negate the need for the temporary period to be applied and for the new rights to apply in perpetuity.

Q2	Can you suggest any other general conditions which might also be imposed ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	X	<input type="checkbox"/>

Comments:
 As Q1, however if the procedure is amended to that in the consultation, it must be made clear how the developer 'has regard' to any representations and how that regard is instigated through amendments or changes to the proposals. This must have weight or the procedure has no merit.

Q3	Do you agree that the alternative "fast track" land use planning arrangement described above should apply for the temporary period described in paragraph 5.9 ?	Yes	Yes (subject to further comment)	No
		X	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
 If the procedure is implemented as consulted on, then the temporary period would be appropriate to minimise long term harm. However, as stated in Q1 if the prior notification procedure was altered as suggested this could be implemented in perpetuity.

Q4	Do you agree that the current prior approval threshold for antenna mounted on buildings and structures should be increased from 4 metres to 6 metres ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:
 Not applicable in the National Park so no comment

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Q5	Do you agree that a new permitted development right should be introduced specifically for the installation of a limited number of small cell antenna of up to 0.5 metres in size ?
Comments: There is no objection in principle to this.	

Q6	Do you think any other dimensional limits or additional siting restrictions should apply to such small cell antenna and also include your reasons ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	X	
Comments: It is suggested that 0.5metres be clarified (it is assumed that this is as other dimensions and is "measured in any dimension")				

Q7	Do you agree that the aggregated dish diameter threshold limits should be increased as proposed in paragraph 5.27 above ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	X
Comments: There is concern that the increased sizes could impact significantly on the character of buildings, particularly those buildings and structures of smaller dimensions.				

Q8	Do you think any additional siting restrictions should apply to such additional antenna?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	X	<input type="checkbox"/>
Comments: It is considered that this rule should be restricted to larger buildings - a ratio of wall to size of antenna could be a way to ensure that the antenna remains as a subservient part of the building or structure.				

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Q9	Do you think any additional conditions should apply to such an extended permitted development right?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comments:
 It is suggested that this extended right be subject to the prior notification procedure where the building/structure is situated on Article 1(5) land.

Q10	Do you support time - limiting Proposals A - F in this paper until 31/12/17? If not, what lesser or greater period do you favour ?	Yes	Yes (subject to further comment)	No
		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:
 It is considered that if these amendments are acceptable in the short term, they should also be acceptable in the longer term. This restricted period suggests that the proposals could be harmful and in that scenario should not therefore be accepted over either a short or long period of time. Any additional permitted development rights should allow development to go ahead that is not likely to cause any harm rather than to meet other pressures in the shorter term and at risk of undermining visual amenity. The planning system is in place to manage development in the public interest and any permitted rights should protect the environment from harm over any period of time.

Q11	Have you any evidence that any of the specific issues mentioned in Annex 1 are significant ones in Wales?
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Comments:
 There is no specific evidence on these issues, but general agreement that clarity of definitions should be provided.

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Q12	Do you agree that any up-dated references for the Code should be made available through the Welsh Government website?	Yes	Yes (subject to further comment)	No
		X	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Draft Regulatory Impact Assessment

Q13	Do you have any comments to make about the draft Regulatory Impact Assessment at Annex 2?	Yes	No
		X	<input type="checkbox"/>

Comments:
 The cost analysis does not consider the impact on the public with regard to introducing a fast track scheme of representation rather than the prior notification procedure. This fast track system with only a requirement to 'have regard' to representations could result in unsympathetic and visually intrusive developments going ahead that cause detrimental harm to townscapes and local character. This is particularly important on Article 1(5) land which is designated for its special qualities and in the case of National Parks are significant public assets.

General

Q14	We have asked a number of specific questions throughout this consultation. If you have any related queries or comments which we have not specifically addressed, please use this space to report them:
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Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation form and send it to : planconsultations-e@wales.gsi.gov.uk (Please include 'Proposed additional PDRs for Code Operators Consultation – WG-17476' in the subject line).
Post
Please complete the consultation form and send it to: Proposed additional PDRs for Code Operators Consultation Planning Division Welsh Government Cathays Park Cardiff CF10 3 NQ
Additional information
If you have any queries on this consultation, please Email: planconsultations-e@wales.gsi.gov.uk Telephone: N Butler on 029 2082 3585