



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

ADRODDIAD GAN Y PWYLLGOR DEDDFAU LEGISLATION COMMITTEE REPORT

**The Town and Country Planning (General Permitted Development) (Amendment)
(Wales) Order 2002**

This substitutes a new Part 24 in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. This confers permitted development rights in relation to telecommunications apparatus.

Standing Order 11.5

Questions were raised with the Minister in relation to the following matters.

- It was queried why condition A.3(4)(b) relating to compliance with provisions concerning radiation protection, is in the form of a requirement for an application to be accompanied by a declaration rather than in the more direct form of a condition that the apparatus must comply with the provisions referred to.
- It was queried why the above is only applied in the case of development falling within the limitations specified in A.2(4) given that the draft Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order seeks to apply the same radiation protection provisions to a wider description of development.

The response submitted on behalf of the Minister is in the Annex to this report.

The observations submitted on behalf of the Minister deal with the second of the above queries first. In relation to the second query it is submitted that the introduction of a certification requirement in respect of the wider description of development would pose

practical difficulties given that such extended application would relate to cases where no prior notification to the local planning authority is required.

This point is not fully understood given that, taking up the point raised in the first query, the requirement in question could have been imposed as a condition requiring development to comply with the provisions referred to rather than a condition requiring the submission of a declaration.

However, the extent of development to which compliance with the EU Council recommendation is applied is a policy matter. Thus the Committee merely invites the Assembly to pay special attention to this particular aspect of the order on the grounds that its form has needed the further explanation which has been provided on behalf of the Minister.

In relation to the first query it is submitted on behalf of the Minister that having taken a decision to limit the requirement to those telecommunications developments which require prior approval, doing this by requiring submission of a declaration rather than by a condition directly limiting the development “becomes a matter of form rather than substance”. Additionally it is explained that the Scottish precedent SSI 2001/266 has been “a major factor” in this decision.

It appears to the Committee that the above reasoning is to some extent “circular”. The reason for limiting compliance with the guidelines to cases where prior application is required is said to be the difficulty of applying a “declaration” procedure in cases where there is no prior application requirement. Conversely, however, the reason for adopting a “declaration” procedure rather than a condition directly requiring compliance with the guidelines is said to result from the decision that the requirement should only apply in prior notification cases.

Nevertheless it is accepted that this is a matter of policy, and the Committee thus merely invites the Assembly to pay special attention to the provision in question on the grounds that its form has needed the further explanation which has now been provided.

Some additional points which the legal advisers to the Committee had identified in relation to an earlier draft have now been taken into account.

Mick Bates AM
Chair, Legislation Committee

28 May 2002

ANNEX

The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2002

The point which you raise in relation to the use of “requirements” and “guidelines” is noted and accepted, as are the other minor drafting points.

The substantive points which you raise relate to:

- (a) the use of a condition attached to the making of an application for “prior approval” of the siting and appearance of the development rather than a condition attached to the permission for development itself; and
- (b) the limitation of the condition requiring the necessary certificate to only those developments falling with Condition A.2(3).

To a large degree these points are interrelated. The background is that telecommunications development falls into three categories:

- (i) that which is permitted under Part 24 without the need to make any form of application to the local planning authority;
- (ii) that which is permitted under Part 24 but only on condition that an application for “prior approval” is made;
- (iii) that which is not permitted under the GPDO and therefore requires a full application for planning permission.

If the proposed orders are made then (where an antenna is involved) classes (ii) and (iii) will require a certificate of compliance but not (as you point out) (class (i)).

Although a case could obviously be made for extending the requirement for a certificate to class (i) there are practical objections. Since at present this class of development requires no notification to the local planning authority, a requirement that a developer obtain a certificate before proceeding would be incapable of enforcement unless there were some added obligation to provide the local planning authority with a copy. Whilst this would not, in practice, appear to be particularly onerous it would of course require a form of notification where none exists at present and the Minister judges that the degree of controversy which this would generate would be out of proportion to the benefit to be gained. The decision to limit the new requirement to those cases where an application is already required is therefore a policy judgement which it is not proposed to alter.

Once a decision is taken to limit the requirement to those telecommunications developments which require prior approval then doing so by making it a condition of the application for prior approval, rather than a condition of the development being permitted, becomes a matter of form rather than substance.

In opting for the requirement to be a condition of the application a major factor has been, again, the Scottish precedent, namely the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 (SSI 2001/266). (*Note: the “prior approval” requirements are not the same, because the classes of telecommunications development require planning permission appears to be considerably wider in Scotland, but the manner of introducing the requirement for the certificate, namely*

that it should accompany a notification already required for other reasons, is the same as that of the Welsh draft).

Again, having carefully considered the matters which you raise, Planning Division intend to proceed with the proposed order in its original form.