

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-26-14

CLA453 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2014

This Order amends the Town and Country Planning (General Permitted Development) Order 1995 in relation to Wales. Specifically, it amends the ‘permitted development rights’ that apply to electronic communications operators in Wales. The Order contains many detailed amendments. Some of the main changes are:

- existing mobile phone masts may be altered or replaced to increase their height from up to 15 metres to up to 20 metres, and they may be increased in width by up to a third,
- an increase in the number and size of antennas that can be attached to certain buildings,
- the placing of telegraph poles, cabinets or broadband lines will not prior require approval in areas such as National Parks and AONBs, provided that certain conditions are met.

Procedure: Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument:

- The additional permitted development rights will allow, among other things, higher masts and more dishes to be installed across Wales, without needing to apply for planning permission.

Standing Order 21.3(ii): that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;

Legal Advisers

Constitutional and Legislative Affairs Committee

October 2014

Government's response:

Note by Planning Division (WG) in response to draft CLAC report on the Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No.2) Order 2014

Non-devolved areas

1. Responsibility for the specific legislation covering telecommunications is **not devolved**. The Electronic Communications Code is designed to facilitate the installation and maintenance of electronic communications networks and confers rights on providers of such networks. The Electronic Communications Code (Conditions and Restrictions) Regulations 2003, applying within the UK, require an Electronic Communications Code Operator, where practicable, to share the use of electronic communications apparatus. These regulations were amended last year to introduce a more permissive regime (until May 2018) for installation above ground of fixed -line broadband electronic communications apparatus.

Land use planning aspects

2. Insofar as the installation of any apparatus constitutes "development", planning permission will be needed for that development. Code Operators already enjoy a specific permitted development right (PDR) under Part 24 of the Town and Country

Planning (General Permitted Development) Order 1995 [*paragraphs 1.1 and 1.2 of EM*].

Policy approach

3. The amendment Order is made to facilitate certain fixed-line and mobile broadband in Wales within parameters which strike the appropriate balance between the land use planning objectives of minimising impact on the environment and the economic development objectives. Provision is intended to compliment the:

- i) current Superfast Cymru programme of (subsidised) broadband roll out through fixed -line apparatus;
- ii) deployment of mobile phone services following last year's Spectrum Award by OFCOM and the mobile broadband coverage obligation which is part of that; and
- iii) UK Government's Mobile Infrastructure Project.

The principles of the policy approach were reflected in proposals in a consultation paper "Proposed additional permitted development rights for Electronic Communications Code Operators (facilitating Broadband roll-out)".

New PDR enabling existing masts to be increased to up to 20 metres in height

4. This applies to existing ground-based masts only and does not apply to article 1(5) land nor within SSSIs. It is subject to the same prior approval application requirement (*Part 24,A.2 (4)(b)*) as any other mast [*paragraph 1.3(b)i of EM*]. Increasing the height of existing masts enables more equipment to be carried on them and that in turn provides more coverage using fewer sites.

Increase in the number and size of antenna that can be attached to certain buildings

5. Current paragraphs A.1(g) and A.1(h) of Part 24 of Schedule 2 to the 1995 Order already limit both the size of any individual dish antenna and the aggregated size of dish antenna which can be installed on an individual building. Non-dish antenna (other than small antenna) are

limited by the number of antenna systems permitted on a building. The individual size limits for dish antenna remain unchanged. What is increased are the aggregated size limits for dish antenna on a building and the limit on the number of antenna systems on a building. Increasing these limits will maximise the use of existing sites by encouraging the expansion on existing sites and the sharing of apparatus by different operators [*paragraph 1.3(b)ii) of EM*].

The placing of telegraph poles, cabinets or broadband lines will not require approval in areas such as National Parks and AONBs, provided that certain conditions are met.

6. The new paragraph A.2(4A) of Part 24 provides a new procedure only for –

“..... the construction, installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband,and provided that the development is completed on or before 30th May 2018”.

This was a main proposal in the WG consultation paper [*paragraphs 4.2 to 4.3 of EM explain the reasons*].

All other Class A development eg the installation of a cabinet or a telegraph pole on article 1(5) land for other telephone services, remains subject to a prior approval application requirement.

The additional permitted development rights will allow, among other things, higher masts and more dishes to be installed across Wales, without needing to apply for planning permission.

7.1 The changes are subject to checks and balances eg the existing prior approval application requirement for masts is not changed. The changes do not permit new ground based masts on article 1(5) land.

7.2 Central to the mobile infrastructure changes is encouraging operators to maximise the use of existing infrastructure, where possible, to minimise the need for new ground based masts. Most operators now share masts wherever possible. Two former operators have merged and two operators have concluded a mobile infrastructure sharing agreement between them.

7.3 Separate (long-standing) PDRs in Parts 1.H and 25 of Schedule 2 to the 1995 Order already permit the installation of a limited number of microwave antenna on (or within the curtilage of) a dwelling house or other buildings or structures without needing specific planning permission from the local planning authority.

7.4 The Part 24 PDR sets the limits and parameters of what development should continue to be the subject of a specific planning application made to the local planning authority and what development should be permitted development under the terms of that PDR. Setting the limits of what ought to be permitted development involves striking a balance. The Part 24 PDR provision for masts is longstanding but this is already subject to a prior approval application requirement and this will remain the case.

Planning Division
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