

REPORT OF DIRECTOR OF PARK DIRECTION AND PLANNING

SUBJECT: CHANGES TO THE PART 24 (TELECOMMUNICATIONS) PERMITTED DEVELOPMENT RIGHTS

1. Purpose of Report

- 1.1 To provide members with an update on the changes to Part 24 permitted development rights for electronic communications code operators. (“Development by Electronic Communications Code Operator (Wales)”) by the Town and Country Planning) General Permitted Development (Amendment) (Wales) (No.2) Order 2014 (“the 2014 Order”).
- 1.2 It is also considers the National Park Authority’s response to last year’s consultation paper “Proposed additional permitted development rights for Electronic Communications Code Operators’.
- 1.3 For members to note that the changes will come into force on the 7 November 2014

2. Background

- 2.1 The Town and Country Planning (General Permitted Development) (Order) 1995 (GPDO) lists the type of developments and changes of use that are permitted development and as such do not require a formal planning application.
- 2.2 Part 24 of the document confers permitted development rights subject to certain conditions and limitations for certain development by operators of electronic communication networks.
- 2.3 Part 24 of “the 1995 Order” was consolidated and amended by the Town and Country Planning (general Permitted Development) (Amendment) (Wales) Order 2002 (“the 2002 Order”), and last year the Welsh Government released a consultation paper “Proposed additional permitted development rights for Electronic Communications Code Operators’ which outlined the proposed changes to Part 24 to facilitate the provision of infrastructure to ensure access to next generation broadband at premises.
- 2.4 The Authority’s response to the consultation paper was endorsed by members in the National Park Authority meeting on the 23 October 2013.

- 2.5 On 6th October, the Welsh Government issued a letter to provide advance notice of the changes which have been made to the part 24 permitted development rights, **which will come into force on 7 November 2014.**
- 2.6 The 2014 order will be published on www.legislation.gov.uk in the next few weeks, however a draft copy has been provided. In addition annexes A and B of the letter issued by Welsh Government contain a summary of the key changes made to part 24 by the 2014 order.
- 2.7 Further procedural guidance will be made available for local planning authorities prior to the coming into force date. Annex 1 (“Guidance on Prior Approval Procedures for Telecommunications Permitted Development”) of Technical Advice Note 19 “Telecommunications” (August 2002) will be superseded by the new guidance in due course.

3. Proposed changes

- 3.1 The changes follow the proposals included in last year’s consultation paper and relate to:
- 3.2 Specific apparatus such as telegraph poles, cabinets or lines when used by a Code operator for the provision of fixed-line broadband on article 1 (5) land (National Parks, Areas of Outstanding Natural Beauty and conservation areas); and Apparatus frequently used by Code Operators to provide mobile phone services.

4. PART 1 - Fixed-line broadband apparatus on article 1 (5) land (National Parks, Areas of Outstanding Natural Beauty and conservation areas)

“the 1995 Order” (as amended by the 2002 Order)

- 4.1 Certain development permitted under Part 24 is conditional upon the operator making a prior approval application to the local planning authority. Such an application will allow the local planning authority to consider, within 56 days, the siting and appearance of the proposed development.
- 4.2 At present, any forms of telecommunications development which is permitted under Part 24, such as street cabinet boxes, where the development would be situated on Article 1 (5) Land (National Park areas, AONBs and conservation areas) or an SSS1, and other land specified apparatus such as masts, are subject to a 56 day prior approval procedure under paragraph A.2 (4) of Part 24, except in case of emergency.
- 4.3 Under such application, the Authority has 56 days in which to make and notify its determination on whether prior approval is required to siting and appearance and to notify the applicant of its decision to give or

refuse such approval. The consultation requirements are the same as an application for planning permission, where a site notice is displayed on site for 21 days, and statutory consultees and adjoining occupiers are notified. The local planning authority is required to take into account any representations received as a result of consultation or notices when determining the application. The application also incurs a fee of £330.

“The draft 2014 Order”

4.4 Under the new order, in the case of article 1 (5) land, from 7 November 2014, class A development consisting of the construction, installation or replacement of a telegraph pole, cabinet, or line for fixed line broadband will no longer require the making of a prior approval application. Instead such development i) will need to be completed on or before 30 May 2018 and ii) 3 additional conditions will need to have been complied with.

4.5 These 3 additional conditions will be:

1. The developer giving one month’s notice in writing where the development is in:
 - i) A National Park, to the relevant County Council(s) for the area and to Natural Resources Wales; and
 - ii) An Area of Outstanding Natural Beauty, to Natural Resources Wales. This notice will need to state the developer’s intention of installing apparatus, describe that apparatus and identify its proposed location.
2. Any cabinet being green, black (except matt black) or a colour which has the written approval of the local planning authority prior to the commencement of the development.
3. Any telegraph pole being of the same appearance and being made of the same material as the nearest existing telegraph pole to it which has planning permission unless an alternative appearance or material has been approved in writing by the local planning authority prior to the commencement of the development.

NPA response to the consultation paper

4.6 The NPA raised concern at the introduction of the changes to proposals on Article 1(5) Land in lieu of the current prior approval procedure. This concern was due to the fact that the procedure is not consistent with other parts of the GPDO where a prior notification is required

and which enables a simplified system to operate but enables LPA's to have control over siting and appearance.

- 4.7 It was suggested that the current prior approval procedure remained, but with amendments to facilitate easier submission to enable a more streamline approach, but with appropriate mechanism in place for LPAs to require changes where proposal are considered to be inappropriate
- 4.8 This suggested recommendation has not been implemented within "the draft 2014 order".
- 4.9 The consultation paper noted that developers would 'have regard' to concerns raised by LPA's however concerns were raised as it was not clear whether there would be statutory requirement for the developer to address the concerns raised, as the procedure would have no weight without some requirement for developers to adhere to the comments raised.
- 4.10 "The draft 2014 order" does not state that developers would be required to 'have regard' to concerns raised by LPA.

What this means to the National Park

- 4.11 The NPA will no longer have the ability to approve or refuse the siting and appearance of apparatus that are permitted under Class A of part 24 in relation to the construction, installation or replacement of a telegraph pole, cabinet or line for fixed –line broadband.

5. PART 2 – Summary of key changes made to part 24 (Wales) linked to Mobile infrastructure apparatus

- 5.1 The current prior approval threshold (A.2 (4) (b) of Part 24) is changed for antenna mounted on buildings or structures from 4 meters to 6 meters.**

NPA's consultation response:

- 5.2 This change is not applicable to article 1 (5) land, therefore the NPA had no comments to make.
- 5.3 An increase in number of antenna systems, other than dish antennas allowed on buildings or structures (other than masts) as permitted development.**
- 5.4 3 antenna systems permitted in the case of buildings/structures below 15 meters in height (currently only 2 are permitted); 5 antenna systems in the case of buildings/structures 15metres or more in height (currently only 3 are permitted).

- 5.5 New provision made for up to two “small cell antenna” on buildings (but not on, or within the curtilage of, any dwelling house) or structures. (In the case of article 1 (5) land, a prior approval application requirement applies).**

NPA consultation response:

- 5.6 The NPA raised no objection to this change in principle, however it was suggested that 0.5metres be clarified (it was assumed that this is as other dimensions and is “measured in any dimensions”).
- 5.7 A new definition of “small cell antenna” is provided within “the draft 2014 order” which includes size restrictions.
- 5.8 An increase in aggregated diameter of all dish antenna (used by Code operators) allowed on buildings or other structures. This varies according to the height of the building or structure.**
- 5.9 Currently, in the case of buildings or structures below 15m in height, an aggregate size of all dishes up to 1.5m is allowed, this will increase to 4.5m.
- 5.10 Currently, in the case of buildings or structure which is 15m or more in height, an aggregate size of all dishes up to 3.5m is allowed, this will increase to 10m.

NPA’s consultation response:

- 5.11 The NPA raised concern that the increase sizes could impact significantly on the character of buildings, particularly those buildings and structures of smaller dimensions.
- 5.12 The NPA’s concern has not been taken into account.
- 5.13 New provision made for up to 3 additional dish antenna (not exceeding 0.6metres in size) and up to 3 additional non-dish antenna (not exceeding 3 metres in height) to be added to an existing installation on buildings and other structures (including masts) on article 1 (5) land. (A prior approval application requirement applies).**

NPA’s consultation response:

- 5.14 The NPA responded stating that this rule should be restricted to larger buildings – 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.
- 5.15 Within the consultation paper, it was proposed that new provision is made for up to 2 additional dish antenna, however “the draft 2014 order” will allow a maximum of 3 additional dish antenna.

5.16 “The draft 2014 order” does not restrict this rule to larger buildings, as suggested within NPA’s response.

5.17 New provision made for existing masts (not on article 1(5) land) to be increased in height from up to 15 metres to up to 20 metres and increased in width by up to a third. This does not apply on article 1 (5) land nor on a SSSI, and is subject to prior approval on other land.

NPA’s consultation response:

5.18 Not applicable to National Park

Other changes also made to Part 24;

5.19 Developer contact details to be submitted with an application made under Part 24 for prior approval.

5.20 The prior approval application requirement for “development ancillary to radio equipment housing” on non-article 1(5) land is removed

5.21 A replacement definition of “antenna system” has been inserted

5.22 Clarification is provided in a number of areas;

5.23 Of the current volume limits for radio equipment housing

5.24 That the permitted development rights can include (except within a SSSI), any casing or covering, mounting, fixing, bracket or other support structure, perimeter walls or fences, handrails, steps or ramps or security equipment reasonably required.

5.25 That “development ancillary to radio equipment housing” can (except within a SSSI) include security equipment, perimeter walls and fences, handrails, steps and ramps.

5.26 Where minor amendments to development proposed in a prior approval application are agreed between the developer and the local planning authority, a new application for prior approval is not required

Time – Limiting the above changes

5.27 In last year’s consultation paper, views were invited on whether the proposed changes as listed in Part 2 of this report (paragraphs 5.1 – 5.17) should be time limited to address the specific urgent challenge posed by Mobile Broadband roll-out in Wales without prejudicing any wider review of mobile phone operators permitted development rights. It was proposed that the time limited period should be until 31/12/2017,

by which time the mobile broadband coverage obligation should be met.

- 5.28 The NPA responded, by stating 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 proposal could be harmful and in that scenario should not therefore be accepted over either a short or long period of time.
- 5.29. There is no clear reference to this time-limiting period within “the draft 2014 order”.

6. Regulatory Impact Assessment

- 6.1 A regulatory impact assessment has also been prepared in relation to this order.

NPA’s response to the draft Regulatory Impact Assessment:

- 6.2 In last year’s response, the NPA noted that 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 fact track system with only a requirement to ‘have regard’ to representations could result in unsympathetic and visually intrusive development 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.
- 6.3 The RIA is not available to view at present, therefore no further comments can be added at this stage

7. Conclusion

- 7.1. For members to note that these changes will come into force on the 7 November 2014.

8. Recommendation

- 8.1. That the changes to part 24 be noted by members.

Background Documents

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

NPA’s Consultation Response Form to last year’s consultation paper.

Dear Chief Planning Officer letter – Changes to Part 24 Permitted Development right.
6 October 2014

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

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

Technical Advice Note 19: Telecommunications. August 2002.