

Annex 3

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 If someone has asked for their name and address not to be published, that is an important fact we would take into account.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be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published.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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Date of consultation period: 29 July 2013 to 31 October 2013		
Name	Dr Maggie Hill	
Organisation	Natural Resources Wales	
Address	Ladywell House Newtown SY16 1RD	
E-mail address	Maggie.Hill@cyfoethnaturiolcymru.gov.uk	
Type <i>(please select one from the following)</i>	Businesses/Planning Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	x
	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"/>

		Yes	Yes (subject to further comment)	No
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?	<input type="checkbox"/>	<input type="checkbox"/>	x

Natural Resources Wales welcomes the roll out of next generation broadband across Wales. We consider that it is essential and feasible to deliver this roll out whilst minimising potential adverse impacts on Wales's natural heritage. This includes ensuring that potential adverse impacts on the purposes of National Parks and Areas of Outstanding Natural Beauty (AONB) are appropriately considered in the siting and appearance of development.

The current Part 24, A.2(4)(a) prior approval process (under the Town and Country Planning (General Permitted Development) Order 1995), enable planning authorities to manage the siting and appearance of development proposals within protected landscapes.

This is an important provision as recent Appeal Decisions highlight how even small-scale vertical structures, can have a significant impact on the purposes of protected landscapes. An example is the Inspector's decision (APP/PP9502/A/07/2047339) to

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dismiss an appeal for a proposed 3-bladed windmill attached to the top of an 11m high, stayed metal pole. The Inspector considered that the siting and appearance of the proposed development would not respect the landscape of this part of the National Park.

Whilst, the effects from such a proposal may be different to that of a static structure, the Inspector’s decision exemplifies that such smaller scale vertical structures, where inappropriately located, can have a significant adverse impact on a protected landscape.

We note that the proposed consultation procedures to replace the existing prior approval process , as outlined in paragraph 5.8 of the consultation document, makes provision for representations to be submitted by local planning authorities and Natural Resources Wales. Whilst developers will need to ‘have regard’ to these representations, it is unclear how developers would ‘have regard’ to concerns raised by either the local planning authority or Natural Resources Wales, and what requirement will exist for developers to address any concerns raised in those representations.

We have concerns that where representations made by Natural Resources Wales or the local planning authority are not fully addressed, this may lead to development which is incongruous or inappropriate to its setting.

We therefore consider that the prior approval process should be retained for development proposals within National Parks or AONBs.

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"/>

Notwithstanding our concerns as set out in our response to Q1 above, should it be decided to introduce the proposed new consultation procedures, we recommend the following amendments to conditions:

(i) The specification of the colour green in the first proposed condition may not be appropriate in all settings. For example, dark brown or dark grey may be more suitable in certain historic environments. Further, the use of a highly saturated green hue may be inappropriate.

We suggest that provision should instead be made to ensure that a recessive colour is used, appropriate to its setting, to mitigate the visual prominence of the apparatus. We therefore recommend that the first condition is amended to read as: “Cabinets to be of a colour agreed in writing by the local planning authority”.

(ii) We recommend the following is included as an additional condition:

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“The siting of the supporting pole or structure should be agreed in writing by the local planning authority”.

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
		<input type="checkbox"/>	<input type="checkbox"/>	x

We welcome and support the intention to specifically exclude Special Protection Areas and Special Areas of Conservation from the proposed new arrangements.

However, we are concerned with the proposed removal of the prior approval process in relation to development proposals within National Parks and Areas of Outstanding Natural Beauty.

We note that the proposed consultation procedures outlined in paragraph 5.8 of the consultation document makes provision for representations to be submitted by local planning authorities and Natural Resources Wales. However, we have concerns that where representations made by Natural Resources Wales or the local planning authority are not fully addressed, this may lead to development which is incongruous or inappropriate to its setting.

We therefore consider that the prior approval process should be retained for development proposals within National Parks or AONBs.

Notwithstanding the above concern, we recommend that any guidance produced in support of the proposed changes to permitted development rights should promote the benefits of developing a strategic spatial approach, at national and local levels, to identify the most appropriate locations for siting development. The imminent review of National Parks’ and AONBs’ management plans offers an opportunity for operators and authorities to develop a strategic approach within those areas, and a framework within which the wider public can engage in the process.

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
		x	<input type="checkbox"/>	<input type="checkbox"/>

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?
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We do not object to the extension of permitted development rights for the installation of a limited number of small cell antenna of up to 0.5m, subject to the criteria set out in paragraph 5.20 (Proposals C) of the consultation document.

We further suggest that any development on the walls of buildings or structures within Special Protection Areas and Special Areas of Conservation should be subject to the prior approval process.

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	<input type="checkbox"/>

Please see our comments to Question 5 above.

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
		x	<input type="checkbox"/>	<input type="checkbox"/>

We do not object to the proposed changes to the aggregated dish diameter threshold limits as set out in paragraph 5.27 of the consultation document.

Q8	Do you think any additional siting restrictions should apply to such additional antenna?	Yes	Yes (subject to further comment)	No
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	<input type="checkbox"/>	x	<input type="checkbox"/>
<p>We recognise that it may often be preferable to site a new antenna onto an existing building or structure to avoid additional visual impacts. However, the installation of an extensive array of antenna could also lead to an incongruous development.</p> <p>We therefore recommend that the proposed changes includes a specific requirement for developers to apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of development.</p>			

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"/>	x	<input type="checkbox"/>
<p>As highlighted in our response to Q1 above, recent Appeal Decisions highlight how smaller-scale vertical structures, can have a significant impact on the purposes of protected landscapes. Should it be decided to extend permitted development rights to masts of a height greater than 15metres, this provision should not extend to proposals within protected landscapes.</p>				

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"/>	x
<p>Please see our comments to Q1 above.</p> <p>Should it be decided to introduce the proposed changes, we do not consider that evidence has been provided in this consultation document to demonstrate why the time-limited period should extend beyond 31/12/17.</p>				

Q11	Have you any evidence that any of the specific issues mentioned in Annex 1 are significant ones in Wales?
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No comment

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
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

No comment.

Draft Regulatory Impact Assessment

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

We welcome the preparation of a Regulatory Impact Assessment (RIA) alongside this consultation. However, the RIA gives minimal detail on the potential environmental effects from considered options, such as effects on the landscape. Whilst we note the effect of the proposals on the social and economic sustainability of rural Wales as set out in paragraph 3.3 of the RIA, an assessment of sustainable development should also consider and identify potential environmental effects. This approach would be in line with the definition of sustainable development as set out in Figure 4.1 of *Planning Policy Wales* (Edition 5, 2012) and with the Welsh Government’s duties with respect to: Sustainable Development, and the purposes of National Parks and AONBs. The Nature, Landscape and Outdoor Recreation Branch within Welsh Government could provide further advice on this matter.

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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None

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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:

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