

2001 No. 244

TOWN AND COUNTRY PLANNING

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2001

Made 25th June 2001

Laid before the Scottish Parliament 25th June 2001

Coming into force 23rd July 2001

The Scottish Ministers, in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2001 and shall come into force on 23rd July 2001.

(2) In this Order, “the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(b).

Amendment of the 1992 Order

2.—(1) In article 2(1) of the 1992 Order (interpretation):

- (a) the definitions of “microwave” and “terrestrial microwave antenna” shall be omitted;
- (b) in the definition of “satellite antenna” the word “microwave” shall be omitted;
- (c) the following definitions shall be inserted—

(i) after the definition of “building”—

““category A listed building”, means a listed building within the meaning of section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997(c) specified as being category A in a list of buildings compiled or approved and amended as the case may be by the Scottish Ministers in accordance with that provision as at the date of the coming into force of this Order;”;

(ii) after the definition of “dwellinghouse”—

““European site”, means

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of Council Directive 92/43/EEC(d) on the conservation of natural habitats and of wild fauna and flora;

(a) 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1992/223, amended by S.I. 1992/1078 and 2084, 1993/1036, 1994/1442, 2586 and 3294, 1996/252, 1266 and 3023, 1997/1871 and 3060 and 1998/1226.

(c) 1997 c.9.

(d) O.J. No. L 206, 22.7.92, p.7.

- (c) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under Article 5(1) of the said Council Directive 92/43/EEC, during the consultation period or pending a decision of the Council under Article 5(3); or
 - (d) an area classified pursuant to Article 4(1) or (2) of Council Directive 79/409/EEC^(a) on the conservation of wild birds;”;
- (iii) after the definition of “floor area”–
 ““historic garden or designed landscape”, means a garden or landscape identified in the Inventory of Gardens and Designed Landscapes in Scotland;”;
- (iv) after the definition of “mining operations”–
 ““National Park”, means an area designated as a National Park under section 6(1) of the National Parks (Scotland) Act 2000^(b);”;
- (v) after the definition of “satellite antenna”–
 ““scheduled monument”, has the meaning given by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979^(c);”;
- (vi) after the definition of “statutory undertaker”–
 ““terrestrial antenna” means apparatus designed for transmitting or receiving terrestrial radio energy between two fixed points;”.
- (2) In Part 20 of Schedule 1 to the 1992 Order, for Class 67 substitute–
“Class 67.— (1) Development by or on behalf of a telecommunications code system operator for the purpose of the operator’s telecommunications system in, on, over or under land controlled by that operator or in accordance with his licence, consisting of–
- (a) the construction, installation, alteration or replacement of any telecommunications apparatus;**
 - (b) the use of land in an emergency for a period not exceeding 6 months to station and operate moveable telecommunications apparatus required for the replacement of unserviceable telecommunication apparatus, including the provision of moveable structures on land for the purposes of that use; or**
 - (c) development involving the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the construction and subsequent use of equipment housing.**
- (2) Development is not permitted by this Class if–
- (a) it is to be located in a national scenic area, National Park, Natural Heritage Area, conservation area, historic garden or designed landscape, site of special scientific interest or European Site, or on a Category A listed building or a scheduled monument or within the setting of such building or, as the case may be, monument, unless the development–
 - (i) is carried out in an emergency;
 - (ii) would result in there being not more than two small antennas on the dwellinghouse, neither of which faces on to a road; or
 - (iii) involves the installation of new overhead lines supported by existing poles;
 - (b) it involves construction or installation of a ground based mast;
 - (c) it involves the replacement or alteration of an existing ground based mast or the installation of apparatus on the mast which results in an increase in the overall size of the original structure of up to 2 metres in height or 1 metre measured horizontally or a change in location of more than 4 metres from the location of the original mast;
 - (d) it involves the construction or installation of ground based equipment housing exceeding 3 metres in height or 90 cubic metres in volume;

(a) O.J. No. L 103, 25.4.79, p.1.

(b) asp 10.

(c) 1979 c.46.

- (e) it involves the replacement or alteration of ground based equipment housing which would result in the equipment housing exceeding–
 - (i) 3 metres in height or, if greater, the current height of equipment housing which is being altered or replaced; or
 - (ii) 90 cubic metres in volume or, if greater, the current volume of the equipment housing which is being altered or replaced;
- (f) it involves the installation on a building or other structure (other than a ground based mast) of apparatus, other than equipment housing, which would result in such apparatus exceeding 2 metres measured horizontally or (taken together with any equipment housing on which such apparatus is mounted) exceeding 4 metres in height;
- (g) it involves the alteration or replacement on a building or other structure (other than a ground based mast) of apparatus, excluding equipment housing which would result in that apparatus (taken together with any equipment housing on which such apparatus is mounted) exceeding–
 - (i) 4 metres in height or, if greater, the current height of the apparatus which is being altered or replaced; or
 - (ii) 2 metres measured horizontally or, if greater, the current horizontal measurement of the apparatus which is being altered or replaced;
- (h) it consists of development referred to at sub-paragraph (1)(a) or (c) above which the operator requires to carry out in connection with development involving the construction or installation of a ground based mast for which planning permission has been granted, and the period within which the development must be begun has not yet expired;
- (i) it involves the construction or installation on a building of equipment housing exceeding 3 metres in height or 30 cubic metres in volume;
- (j) it involves the replacement or alteration on a building of equipment housing which would result in such equipment housing exceeding–
 - (i) 3 metres in height or, if greater, the current height of the equipment housing which is being altered or replaced; or
 - (ii) 30 cubic metres in volume or, if greater, the current volume of the equipment housing which is being altered or replaced;
- (k) in the case of the installation, alteration or replacement of any apparatus on a dwellinghouse or within the curtilage of a dwellinghouse, that apparatus–
 - (i) is not a small antenna; or
 - (ii) being a small antenna–
 - (aa) would result in the presence on that dwellinghouse or within the curtilage of the dwellinghouse of more than two such antennas;
 - (bb) is installed on a dwellinghouse so that the highest part of it would be higher than the highest part of the roof on which it would be installed; or
 - (cc) is installed within a national scenic area, Natural Heritage Area, site of special scientific interest, European site, National Park, conservation area, historic garden or designed landscape, or within the curtilage of a Category A listed building or a scheduled monument, on any part of a dwellinghouse which faces on to a road,
- (l) in the case of the installation, alteration or replacement of any apparatus, comprising a small antenna, on a dwellinghouse which is a category A listed building or within the curtilage of such dwellinghouse, that apparatus is installed on any part of the dwellinghouse or within any part of its curtilage which faces onto a road;
- (m) in the case of the installation, alteration or replacement of a small antenna on a building which is not a dwellinghouse or within the curtilage of a dwellinghouse if the development would result in the presence of more than eight small antennas on a building;
- (n) in the case of the installation or replacement of any apparatus other than–
 - (i) a public call box;

- (ii) any apparatus which does not project above the surface of the ground;
 - (iii) equipment housing; or
 - (iv) any kind of antenna;
- the ground or base area of the structure would exceed 1.5 square metres;
- (o) in the case of the installation of apparatus (other than on a building or other structure) the apparatus would exceed a height of 15 metres above ground level;
 - (p) in the case of the alteration or replacement of apparatus already installed (other than on a building or other structure), the apparatus would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;
 - (q) in the case of the installation alteration or replacement of an antenna on a building or other structure (excluding a ground based mast) over 15 metres in height (and where the development is to be located more than 15 metres above ground level)–
 - (i) the antenna exceeds 2.8 metres in height and 1.3 metres when measured horizontally; or
 - (ii) the development would result in there being more than 8 antennas on the building or structure;
 - (r) in the case of the installation alteration or replacement of an antenna on a building or other structure (excluding a ground based mast) not exceeding 15 metres in height or on taller buildings and structures where the development is to be located fewer than 15 metres above ground level–
 - (i) the antenna exceeds 0.9 metres when measured in any dimension; or
 - (ii) the development would result in there being more than 4 antennas (other than small antennas) on the building or structure;
 - (s) it involves the construction of an access track of more than 50 metres in length.
- (3) (a) Development consisting of the construction or installation of one or more antennas or of equipment housing is permitted subject to the condition that the developer shall–
- (i) except in a case of emergency give notice in writing to the planning authority no fewer than twenty-eight days before development is begun of the developer’s intention to carry out such development; or
 - (ii) in a case of emergency give written notice of such development as soon as possible after the emergency begins.
- (b) The information notified in accordance with sub-sub-paragraph (a) above shall include a description (with specifications) of the apparatus and a plan showing the location and layout of the proposed development.
- (4) Development involving the construction or installation of one or more antennas is not permitted by this class unless the developer has submitted in writing to the planning authority at the same time as carrying out the requisite notification procedure referred to at sub-paragraph (3)(a) or (b) above–
- (a) a detailed description of the equipment and its location; and
 - (b) a declaration that the proposed equipment and installation as detailed in the notification required by Class 67(3) is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-ionising Radiation Protection, as expressed in EU Council recommendation of 12 July 1999(a) on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz).
- (5) Development under sub-paragraphs (1)(a) and (c) above is permitted subject to the condition that any antenna or supporting apparatus installed, altered or replaced on a building in accordance with that permission shall, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building.

(6) Development under this class is permitted subject to the condition that any apparatus or structure comprising such development shall be removed from the land, building or structure on which it is situated—

- (a) subject to sub-sub-paragraph (b) below, if it was carried out under sub-paragraph (1)(a) and (c) in an emergency, when the need for the use ceases;
- (b) if it was carried out under sub-paragraph (1)(a) and (c) in an emergency, within a national scenic area, National Park, Natural Heritage Area, conservation area, historic garden or designed landscape, site of special scientific interest, European site or on a Category A listed building or a scheduled monument or within the setting of such a building or, as the case may be, monument, six months from the commencement of the use permitted or when the need for that use ceases whichever is the earlier;
- (c) if it was carried out under sub-paragraph (1)(b), six months from the commencement of the use permitted or when the need for that use ceases whichever is the earlier; or
- (d) in any other case as soon as it is no longer required for telecommunications purposes, and such land, building or structure shall be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the planning authority and the developer.

Interpretation of Part 20

For the purposes of Part 20—

- (a) “the 1984 Act” means the Telecommunications Act 1984(a);
 - “ground based mast” means a mast constructed on the ground either directly or on a plinth or other structure constructed for the purpose of supporting the mast;
 - “land controlled by an operator” means land occupied by the operator in respect of which either under the Lands Clauses Acts he would be enabled to sell the land to the promoters of an undertaking or he holds a lease granted for a term of not fewer than 10 years;
 - “mast” means a structure erected by or on behalf of a telecommunications code system operator for the support of one or more antennas including any mast, pole, tower or other similar structure;
 - “public call box” means any kiosk, booth, acoustic hood, shelter or similar structure which is erected or installed for the purpose of housing or supporting a public telephone and at which call box services are provided (or are to be provided) by a telecommunications code system operator;
 - “small antenna” means an antenna which—
 - (a) is for use in connection with a telephone system operating on a point to fixed multi-point basis;
 - (b) does not exceed 50 centimetres in any linear measurement; and
 - (c) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres;and any calculation for the purposes of (b) and (c) shall exclude any feed element, reinforcing rim mountings and brackets;
 - “telecommunications apparatus” means any apparatus falling within the definition of that term in paragraph 1 of Schedule 2 of the 1984 Act and is referred to as “apparatus”;
 - “the telecommunications code” means the code contained in Schedule 2 to the 1984 Act;
 - “telecommunications code system operator” means a person who has been granted a licence under section 7 of the 1984 Act which applies the telecommunications code to him to pursuance of section 10 of that Act;
 - “telecommunications system” has the meaning assigned to that term by section 4(1) of the 1984 Act;
- (b) development carried out in accordance with a licence is development which is carried out by a telecommunications code system operator in pursuance of a right conferred on that operator under the telecommunications code and in accordance with any conditions relating to the application of that code imposed by the terms of his licence.”.

(3) In Class 68 in Part 21 of Schedule 1 of the 1992 Order—

(a) 1984 c.12.

- (a) in place of “a microwave antenna” where it first occurs, substitute “an antenna” and omit “microwave” in each place where it subsequently occurs (except in sub-paragraph (3)(b));
- (b) in place of sub-paragraph (2)(f), substitute “the development is in a national scenic area, National Park, Natural Heritage Area, conservation area, historic garden or designed landscape, site of special scientific interest; European Site or on a Category A listed building or a scheduled monument or within the setting of such a building or, as the case may be, monument; or”;
- (c) after sub-paragraph (2)(f) insert the following sub-sub-paragraph:–
“(g) if it involves construction or installation of a ground based mast.”

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
25th June 2001

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends article 2(1) of the Town and Country Planning (General Permitted Development) Scotland) Order 1992, substitutes an alternative Class 67 (Development by telecommunications code system operators) in Part 20 of Schedule 1 of the 1992 Order and amends Class 68 (Other telecommunications development) in Part 21 of that Schedule.

The main purpose of this Order is to restrict the range of development permitted under classes 67 and 68 of the 1992 Order without express planning permission being granted under the Town and Country Planning (Scotland) Act 1997.

The main provisions of this Order are that:

- (a) no development will be permitted under either Class 67 or Class 68 if it is located in a national scenic area, National Park, conservation area, historic garden or designed landscape, site of special scientific interest, European site, natural heritage area, Category A listed building or its setting, or scheduled ancient monument or its setting, unless the development is carried out in an emergency or comprises not more than 2 small antennas on any part of a dwelling house that does not face onto a road;
- (b) all ground based masts, irrespective of height require express planning permission;
- (c) the range of development permitted on a building or other structure (other than a ground based mast) is restricted to:
 - (i) on buildings over 15 metres in height, 8 antennas all of which neither exceed either 2.8 metres in height or 1.3 metres wide nor when measured together with any supporting structure exceed 4 metres in height; or
 - (ii) on buildings not over 15 metres in height, either 4 antennas all of which neither exceed 0.9 metres in height nor when measured together with any supporting structure exceed 4 metres in height, or 8 antennas all of which neither exceed 0.5 metres in any direction nor when measured together with any supporting structure exceed 4 metres in height; or
 - (iii) on a dwelling house, 2 antennas all of which neither exceed 0.5 metres in any direction nor project above the highest part of the roof.
- (d) radio equipment housing is only permitted:
 - (i) if it is situated on the ground, it does not exceed either 90 cubic metres in volume or 3 metres in height; or
 - (ii) if it is situated on a building, it does not exceed either 30 cubic metres in volume or 3 metres in height.

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