
STATUTORY INSTRUMENTS

2016 No. 1040

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016

Amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015

2.—(1) The Town and Country Planning (General Permitted Development) (England) Order 2015⁽¹⁾ is amended as follows.

(2) In Part 16 of Schedule 2 (Communications), for Class A, substitute—

“Class A – electronic communications code operators

Permitted development

A. Development by or on behalf of an electronic communications code operator for the purpose of the operator’s electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—

- (a) the installation, alteration or replacement of any electronic communications apparatus,*
- (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or*
- (c) development ancillary to radio equipment housing.*

Development not permitted

Development not permitted: ground-based apparatus

A.1.—(1) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than on a building) is not permitted by Class A(a) if—

- (a) in the case of the installation of electronic communications apparatus (other than a mast), the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;
- (b) in the case of the alteration or replacement of electronic communications apparatus (other than a mast) that is already installed, the apparatus, excluding any antenna, 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;
- (c) in the case of the installation of a mast, the mast, excluding any antenna, would exceed a height of—

- (i) 25 metres above ground level on unprotected land; or
- (ii) 20 metres above ground level on article 2(3) land or land which is on a highway; or
- (d) in the case of the alteration or replacement of a mast, the mast, excluding any antenna, would when altered or replaced—
 - (i) exceed the greater of the height of the existing mast or a height of—
 - (aa) 25 metres above ground level on unprotected land; or
 - (bb) 20 metres above ground level on article 2(3) land or land which is on a highway; or
 - (ii) together with any antenna support structures on the mast, exceed the width of the existing mast and any antenna support structures on it by more than one third, at any given height.

Development not permitted: building-based apparatus other than small antenna and small cell systems

(2) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than small antenna and small cell systems) on a building is not permitted by Class A(a) if—

- (a) the height of the electronic communications apparatus (taken by itself) would exceed—
 - (i) 15 metres, where it is installed on a building which is 30 metres or more in height; or
 - (ii) 10 metres in any other case;
- (b) the highest part of the electronic communications apparatus when installed, altered or replaced would exceed the height of the highest part of the building by more than—
 - (i) 10 metres, in the case of a building which is 30 metres or more in height;
 - (ii) 8 metres, in the case of a building which is more than 15 metres but less than 30 metres in height; or
 - (iii) 6 metres in any other case;
- (c) in the case of the installation, alteration or replacement of a mast on a building which is less than 15 metres in height, the mast would be within 20 metres of the highway (unless the siting remains the same and the dimensions of the altered or replaced mast are no greater);
- (d) in the case of the installation, alteration or replacement of an antenna on a building (other than a mast) which is less than 15 metres in height; on a mast located on such a building; or, where the antenna is to be located below a height of 15 metres above ground level, on a building (other than a mast) which is 15 metres or more in height—
 - (i) the antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building on which the antenna is to be located;
 - (ii) in the case of dish antennas, the size of any dish would exceed 0.9 metres or the aggregate size of all the dishes on the building would exceed 4.5 metres, when measured in any dimension;
 - (iii) in the case of antennas other than dish antennas, the development would result in the presence on the building of—
 - (aa) more than 3 antenna systems; or

- (bb) any antenna system operated by more than 3 electronic communications code operators; or
- (iv) the building is a listed building or a scheduled monument;
- (e) in the case of the installation, alteration or replacement of an antenna on a building (other than a mast) which is 15 metres or more in height, or on a mast located on such a building, where the antenna is located at a height of 15 metres or above, measured from ground level—
 - (i) in the case of dish antennas, the size of any dish would exceed 1.3 metres or the aggregate size of all the dishes on the building would exceed 10 metres, when measured in any dimension;
 - (ii) in the case of antennas other than dish antennas, the development would be on a building which is less than 30 metres in height and would result in the presence on the building of—
 - (aa) more than 5 antenna systems; or
 - (bb) any antenna system operated by more than 3 electronic communications code operators; or
 - (iii) the building is a listed building or a scheduled monument; or
- (f) in the case of the installation of an antenna on electronic communications apparatus on a building on article 2(3) land—
 - (i) the size of any dish antenna to be installed would exceed 0.6 metres or the number of dish antenna which have been installed on the building since 21st August 2013 would exceed 3; or
 - (ii) the height of any antenna other than dish antenna to be installed would exceed 3 metres, or the number of such antennas which have been installed on the building since 21st August 2013 would exceed 3.

Development not permitted: apparatus on masts

(3) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than an antenna) on a mast is not permitted by Class A(a) if the height of the mast (including the apparatus installed, altered or replaced) would exceed any relevant height limit specified in paragraph A.1(1)(c) or (d) or A.1(2)(a) or (b). For the purposes of applying the limit specified in paragraph A.1(2)(a), the words “taken by itself” in that paragraph are omitted.

Development not permitted: antennas and supporting structures installed, replaced or altered on article 2(3) land or land which is a site of special scientific interest

(4) Development consisting of the installation, alteration or replacement of an antenna, a mast or any other apparatus which includes or is intended for the support of an antenna, or the replacement of an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced, is not permitted by Class A(a)—

- (a) on any article 2(3) land unless—
 - (i) the development (excluding the installation, alteration or replacement of a mast) is carried out in an emergency and is within any limitations specified in paragraph A.1 for development of the same type on unprotected land;
 - (ii) the antenna or apparatus comprises or is part of a small cell system and is on a building which is not a dwellinghouse or within the curtilage of a dwellinghouse;

- (iii) the antenna is a small antenna and the development is within the limitations specified in paragraph A.1(5) or (6); or
- (iv) where the antenna or apparatus is not a small cell system or a small antenna, the development is within the limitations specified in paragraphs A.1(1)(c)(ii), A.1(1)(d)(i)(bb) or A.1(2)(f);
- (b) on any land which is, or is within, a site of special scientific interest unless—
 - (i) the development (excluding the installation, alteration or replacement of a mast) is carried out in an emergency and is within any limitations specified in paragraph A.1 for development of the same type on unprotected land; or
 - (ii) the development is within the limitations specified in paragraph A.1(5).

Development not permitted: electronic communications apparatus installed, replaced or altered on a dwellinghouse

(5) Development consisting of the installation, alteration or replacement of any electronic communications apparatus on a dwellinghouse or within the curtilage of a dwellinghouse is not permitted by Class A(a) if that apparatus—

- (a) is not a small antenna;
- (b) is to be located on a wall or roof slope facing a highway which is within 20 metres of the building on which the antenna is to be located;
- (c) would result in the presence on that dwellinghouse or within the curtilage of the dwellinghouse of more than 1 small antenna;
- (d) is to be located on a roof or chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively; or
- (e) is on article 2(3) land and would be located—
 - (i) on a chimney;
 - (ii) on a building which exceeds 15 metres in height;
 - (iii) on a wall or roof slope which fronts a highway; or
 - (iv) in the Broads, on a wall or roof slope which fronts a waterway.

Development not permitted: small antennas installed, replaced or altered on a building which is not a dwellinghouse

(6) Development consisting 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 is not permitted by Class A(a) if—

- (a) that antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building on which the antenna is to be located;
- (b) the building is less than 15 metres in height, and the installation, alteration or replacement would result in the presence on that building of more than 1 small antenna; or
- (c) the building is 15 metres or more in height, but less than 30 metres in height, and the installation, alteration or replacement would result in the presence on that building of more than 2 small antennas.

Development not permitted: ground or base area

(7) Development consisting of the installation, alteration or replacement of any electronic communications apparatus other than—

- (a) a mast;

- (b) an antenna;
- (c) a public call box;
- (d) any apparatus which does not project above the level of the surface of the ground; or
- (e) radio equipment housing,

is not permitted by Class A(a) if the ground or base area of the structure would exceed 1.5 square metres.

Development not permitted: driver information systems

(8) Development consisting of the installation, alteration or replacement of system apparatus within the meaning of section 8(6) of the Road Traffic (Driver Licensing and Information Systems) Act 1989 (definitions of driver information systems etc.)⁽²⁾ is not permitted by Class A(a).

Development not permitted: radio equipment housing

(9) Development consisting of the installation, alteration or replacement of radio equipment housing is not permitted by Class A(a) if—

- (a) the development is not ancillary to the use of any other electronic communications apparatus;
- (b) the cumulative volume of such development would exceed 90 cubic metres or, if located on the roof of a building, the cumulative volume of such development would exceed 30 cubic metres; or
- (c) on any article 2(3) land, or on any land which is, or is within, a site of special scientific interest, any single development would exceed 2.5 cubic metres, unless the development is carried out in an emergency.

Conditions

A.2.—(1) Class A(a) and A(c) development is permitted subject to the condition that—

- (a) the siting and appearance of any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building (excluding a mast) are such that the effect of the development on the external appearance of that building is minimised, so far as practicable;
- (b) the siting and appearance of a mast which has been altered or replaced in a manner which does not require prior approval under paragraph A.2(3), and any electronic communications apparatus installed, altered or replaced on it, are such that the visual impact of the development on the surrounding area is minimised, so far as practicable.

(2) Class A development is permitted subject to the condition that—

- (a) any electronic communications apparatus provided in accordance with that permission is removed from the land or building on which it is situated—
 - (i) if such development was carried out in an emergency, at the expiry of the relevant period; or
 - (ii) in any other case, as soon as reasonably practicable after it is no longer required for electronic communications purposes; and

(b) such land or building is restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority and the developer.

(3) Subject to sub-paragraph (5), Class A development—

- (a) on article 2(3) land, excluding development specified in sub-paragraph (4);
- (b) on land which is, or is within, a site of special scientific interest; or
- (c) on unprotected land where that development consists of—
 - (i) the installation of a mast;
 - (ii) the alteration or replacement of a mast which, when completed—
 - (aa) is taller than the mast which existed prior to such alteration or replacement; and
 - (bb) exceeds a height of 20 metres above ground level;
 - (iii) the construction, installation, alteration or replacement of—
 - (aa) a public call box; or
 - (bb) radio equipment housing, where the volume of any single development exceeds 2.5 cubic metres,

is permitted subject, except in case of emergency (in which case only paragraph A.3(12) applies), to the conditions set out in paragraph A.3 (prior approval).

- (4) Development is specified for the purposes of sub-paragraph (3)(a), if it consists of—
 - (a) the installation, alteration or replacement of a small cell system on a building which is not a dwellinghouse or within the curtilage of a dwellinghouse; or
 - (b) development which is within the limitations specified in paragraph A.1(1)(d)(i)(bb), A.1(2)(f), A.1(5) or A.1(6).

(5) The conditions set out in paragraph A.3 (prior approval) do not apply in relation to Class A development on any article 2(3) land which consists of the construction, installation, alteration or replacement of a telegraph pole, cabinet or line, in connection with the provision of fixed-line broadband, provided that the development is completed on or before 30th May 2018.

(6) In this paragraph—

“fixed-line broadband” means a service or connection (commonly referred to as being ‘always on’), via a fixed-line network, providing a bandwidth greater than narrowband (and for these purposes, “narrowband” means a service or connection providing data speeds up to 128 k bit/s); and

“relevant period” means a period which expires when the need for any electronic communications apparatus, structure or use permitted by Class A ceases or, if sooner, 18 months from the commencement of the construction, installation, alteration or replacement of apparatus or structures permitted by Class A(a) or Class A(c), or the commencement of the use permitted by Class A(b), as the case may be.

Prior approval

A.3.—(1) Before making the application required by sub-paragraph (4), the developer must give notice of the proposed development to—

- (a) any person (other than the developer) who is an owner of the land to which the development relates, or

- (b) a tenant of an agricultural holding any part of which is comprised in the land to which the application relates.
- (2) Notice must be given by or on behalf of the developer as follows—
- (a) by serving a signed and dated notice on every person described in sub-paragraph (1) whose name and address is known to the developer, stating—
 - (i) the name of the developer;
 - (ii) the address or location of the proposed development;
 - (iii) a description of the proposed development (including its siting and appearance which includes the height of any mast);
 - (iv) a statement that the developer will apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development;
 - (v) the name and address of the local planning authority to whom the application will be made;
 - (vi) a statement that the application is available for public inspection at the offices of the local planning authority during usual office hours;
 - (vii) a statement that any person who wishes to make representations about the siting and appearance of the proposed development may do so in writing to the local planning authority;
 - (viii) the date by which any such representations should be received by the local planning authority, being a date not less than 14 days from the date of the notice; and
 - (ix) the address to which such representations should be made; or
 - (b) if the developer has been unable to ascertain the names and addresses of every such person after taking reasonable steps, by local advertisement.
- (3) Where the proposed development consists of the installation, alteration or replacement of a mast within 3 kilometres of the perimeter of an aerodrome, the developer must notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, before making the application required by sub-paragraph (4).
- (4) Before beginning the development described in paragraph A.2(3), the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting and appearance of the development.
- (5) The application must be accompanied by—
- (a) a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid;
 - (b) the developer's contact address, and the developer's email address if the developer is content to receive communications electronically;
 - (c) evidence that the requirements of sub-paragraph (1) have been satisfied where applicable; and
 - (d) where sub-paragraph (3) applies, evidence that the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as the case may be, has been notified of the proposal.
- (6) Subject to sub-paragraphs (8)(b)(ii) and (c), upon receipt of the application in accordance with sub-paragraph (5), the local planning authority must—

- (a) for development which, in their opinion, falls within a category set out in the Table in Schedule 4 to the Procedure Order (consultations before the grant of permission), consult the authority or person mentioned in relation to that category, except where—
 - (i) the local planning authority are the authority so mentioned; or
 - (ii) the authority or person so mentioned has advised the local planning authority that they do not wish to be consulted,
 and must give the consultees at least 14 days within which to comment;
 - (b) in the case of development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated, or which would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way)(3) applies, must give notice of the proposed development, in the appropriate form set out in Schedule 2 to the Procedure Order (notice of applications for planning permission)—
 - (i) by site display in at least one place on or near the land to which the application relates, for not less than 21 days, and
 - (ii) by local advertisement;
 - (c) in the case of development which does not fall within paragraph (b) but which involves development carried out on a site having an area of 1 hectare or more, must give notice of the proposed development, in the appropriate form set out in Schedule 2 to the Procedure Order by local advertisement and either—
 - (i) by site display in at least one place on or near the land to which the application relates, for not less than 21 days, or
 - (ii) by serving notice on any adjoining owner or occupier;
 - (d) in the case of development which does not fall within paragraph (b) or (c), must give notice of the proposed development, in the appropriate form set out in Schedule 2 to the Procedure Order—
 - (i) by site display in at least one place on or near the land to which the application relates for not less than 21 days, or
 - (ii) by serving notice on any adjoining owner or occupier.
- (7) When determining the application made under sub-paragraph (4), the local planning authority must take into account any representations made to them as a result of consultations or notices given under paragraph A.3.
- (8) The development must not begin before the occurrence of one of the following—
- (a) the receipt by the applicant from the local planning authority of a written notice of their determination that prior approval is not required;
 - (b) where the local planning authority gives the applicant written notice that prior approval is required—
 - (i) the giving of that approval to the applicant, in writing, within a period of 56 days beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5);
 - (ii) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5) without the local planning authority notifying the applicant, in writing, that such approval is given or refused; or

(3) 1981 c.69. See in particular section 66, to which there are amendments not relevant to this Order.

- (c) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5) without the local planning authority notifying the applicant, in writing, of their determination as to whether such prior approval is required.
- (9) The development must, except to the extent that the local planning authority otherwise agree in writing, be carried out—
 - (a) where prior approval has been given as mentioned in sub-paragraph (8)(b)(i), in accordance with the details approved;
 - (b) in any other case, in accordance with the details submitted with the application.
- (10) The agreement in writing referred to in sub-paragraph (9) requires no special form of writing, and, where that agreement is in place, there is no requirement on the developer to submit a new application for prior approval in the case of minor amendments to the details submitted with the application for prior approval.
- (11) The development must begin—
 - (a) where prior approval has been given as mentioned in sub-paragraph (8)(b)(i), not later than the expiration of 5 years beginning with the date on which the approval was given;
 - (b) in any other case, not later than the expiration of 5 years beginning with the date on which the local planning authority received the application in accordance with sub-paragraph (5).
- (12) In the case of emergency, development is permitted by Class A subject to the condition that the operator must give written notice of such development as soon as possible after the emergency begins, to—
 - (a) the local planning authority; and
 - (b) in the case of development carried out on land which is, or is within, a site of special scientific interest, to Natural England⁽⁴⁾.

Intepretation of Class A

A.4 For the purposes of Class A—

“aerodrome operator” means the person for the time being having the management of an aerodrome or, in relation to a particular aerodrome, the management of that aerodrome;

“antenna system” means a set of antennas installed on a building and operated in accordance with the electronic communications code;

“development ancillary to radio equipment housing” means the construction installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of the radio equipment housing, and except on any land which is, or is within, a site of special scientific interest includes—

- (a) security equipment;
- (b) perimeter walls and fences; and
- (c) handrails, steps and ramps;

“electronic communications apparatus” and “electronic communications code” have the same meaning as in the Communications Act 2003⁽⁵⁾;

⁽⁴⁾ See section 1 of the Natural Environment and Rural Communities Act 2006 (c. 16)

⁽⁵⁾ 2003 c.21; there is a relevant amendment in S.I. 2011/1210. See in particular section 151 for the definition of “electronic communications apparatus” and section 106(1) for the definition of “electronic communications code”.

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106(3)(a) of the Communications Act 2003;

“mast” means a radio mast or radio tower;

“owner” means any person who is the estate owner in respect of the fee simple, or who is entitled to a tenancy granted or extended for a term of years certain of which not less than 7 years remain unexpired;

“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 0.5 metres 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 paragraph (b) or (c) excludes any feed element, reinforcing rim mountings and brackets;

“small cell system” means an antenna which may be variously referred to as a femtocell, picocell, metrocell or microcell antenna, together with any ancillary apparatus, which—

- (a) operates on a point to multi-point or area basis in connection with an electronic communications service (as defined in section 32 of the Communications Act 2003(6));
- (b) does not, in any two-dimensional measurement, have a surface area exceeding 5,000 square centimetres; and
- (c) does not have a volume exceeding 50,000 cubic centimetres,

and any calculation for the purposes of paragraph (b) or (c) includes any power supply unit or casing, but excludes any mounting, fixing, bracket or other support structure; and

“unprotected land” means any land which is not—

- (a) article 2(3) land; or
- (b) land which is a site of special scientific interest.

A.5 Where Class A permits the installation, alteration or replacement of any electronic communications apparatus, the permission extends to any—

- (a) casing or covering;
- (b) mounting, fixing, bracket or other support structure;
- (c) perimeter walls or fences;
- (d) handrails, steps or ramps; or
- (e) security equipment,

reasonably required for the purposes of the electronic communications apparatus.

A.6 Nothing in paragraph A.5 extends the permission in Class A to include the installation, alteration or replacement of anything mentioned in paragraph A.5(a) to (e) on any land which is, or is within, a site of special scientific interest if the inclusion of such an item would not have been permitted by Class A, as read without reference to paragraph A.5.”

(6) There are amendments to section 32 which are not relevant to this Order.