

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) (No. 2) ORDER 2016

2016 No. 1040

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2016 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”) to introduce and extend permitted development rights in relation to electronic communications infrastructure.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 57 of the Town and Country Planning Act 1990 (“the 1990 Act”) provides that planning permission is normally required for any development of land. “Development” is defined in section 55. Under section 58, planning permission may be granted on application to a local planning authority, or by a development order made under the 1990 Act.
- 4.2 This Order amends the General Permitted Development Order. Both Orders are made under sections 59, 60, 61 and 333(7) of the 1990 Act. These provisions give the Secretary of State the power to grant planning permission for classes of development specified in a development order. The General Permitted Development Order grants planning permission for a range of specific classes of development, subject to certain limitations and conditions. Planning permission granted under the General Permitted Development Order is known as a “permitted development right”. The effect is that an application for planning permission does not need to be made to the local planning authority, although in some cases permitted development rights require the local planning authority to approve certain matters before development can proceed. This is known as “prior approval”.

- 4.3 This Order substitutes Class A of Part 16 of Schedule 2 to the General Permitted Development Order (“Class A”), with amendments. Under Class A, planning permission is granted for electronic communications code operators in relation to electronic communications infrastructure. The amendments made to Class A build on a package of permitted development rights introduced in 2013 by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2013 (S.I 2013/1868) which sought to introduce greater flexibility to facilitate mobile infrastructure roll-out.
- 4.4 The Order makes a number of minor and drafting amendments. In particular, a number of rights use the term ‘building’. This term is defined in article 2 of the General Permitted Development Order and includes ‘any structure or erection’. Hence, where the term ‘building’ is used in Class A, unless otherwise stated, this includes a mast or other structure.
- 4.5 Changes of substance made by this Order are outlined in detail in the Explanatory Note. A summary is set out below. References to “article 2(3) land” are to land defined in article 2(3) of the General Permitted Development Order, which includes National Parks, conservation areas and areas of outstanding natural beauty. References to “unprotected land” are to land which is neither article 2(3) land nor land which is a site of special scientific interest.
- **Installation of masts** - the height of masts which may be installed on unprotected land is increased from 15 metres to 25 metres, or 20 metres on a highway. A new permitted development right to install masts on article 2(3) land is introduced, subject to a height limit of 20 metres. Prior approval is required in both cases.
 - **Alteration or replacement of existing masts** – existing masts may be altered or replaced on unprotected land subject to a height limit which is increased from 20 metres to the greater of the existing height or 25 metres (20 metres on a highway). A new permitted development right to alter or replace masts on article 2(3) land is introduced, subject to a height limit of the greater of the existing height or 20 metres. Prior approval is required for increases in height above 20 metres.
 - **Building-based apparatus** – limitations on small cell systems on buildings (other than dwellinghouses) are removed. Prior approval is no longer required for the installation, alteration or replacement of antenna on buildings on article 2(3) land (within specified limitations), and limitations on the number of antenna on buildings over 30 metres are removed.
 - **Emergency development** – Class A development undertaken in an emergency is subject to a maximum period which is extended from 6 to 18 months, unless the need ceases earlier.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Permitted development rights serve to reduce bureaucracy and cost, and provide developers with a greater level of speed and certainty by prescribing what types of development can be undertaken without applying for planning permission.
- 7.2 Digital communications are an integral part of modern life. However, not everyone has access to the fastest available broadband speeds, while access to mobile services still varies significantly across the country. Rural interest groups report particularly poor provision in some rural areas which is seen as a major constraint on the competitiveness of rural businesses. Ofcom's Connected Nations Report 2015¹ found that 72% of all premises in rural areas had outdoor coverage for voice (2G and 3G) from mobile operators, compared to 99% in urban areas. This is harming the rural economy, hurting local businesses and stifling home working in rural areas, as well as restricting the ability of people in such areas to access on-line services.
- 7.3 Improving the country's communications infrastructure is integral to our ability to grow the economy and compete on a global scale, particularly as demand for 4G (superfast mobile broadband) continues to rise. For example, there were over 83 million mobile subscriptions in the UK in 2014 with 57% of adults using mobiles to access the internet compared with 32% in 2011 (Ofcom Infrastructure Report 2014²).
- 7.4 Delay and cost in deploying superfast mobile broadband will reduce the social and economic benefits that are emerging from its adoption. Looking to the future, addressing the causes of delay and cost will also help ensure that the benefits of 5G technology, when rolled out, are available to all. For these reasons, the government entered a voluntary binding agreement with mobile operators to ensure that 90% of the UK landmass will have voice and SMS coverage by 2017³.
- 7.5 In order to support increased coverage, it is vital that the planning system facilitates appropriate development, whilst continuing to protect important local and national interests, including visual amenity. Consequently, the government made a manifesto commitment to review the planning system in England for mobile connectivity and, as part of the 2015 Productivity Plan "Fixing the foundations: Creating a more prosperous nation", it announced plans to support market investment and streamline legislation to make it easier to roll out mobile infrastructure.
- 7.6 The government issued a call for evidence in July 2015, seeking evidence of the effectiveness of the telecommunications permitted development rights implemented in 2013 (referred to in paragraph 4.3), and views on the scope for further improvements to support delivery of the government's ambitions for improved mobile coverage.
- 7.7 Following consideration of the responses received, the government announced a package of measures to extend permitted development rights, which were set out in a Written Ministerial Statement on 17 March 2016.
- 7.8 A major part of the reforms package is to allow masts of increased height, subject to appropriate protections. Evidence received as part of the review showed that increasing the height of a mast from 15m to 20m delivers a 10% increase in coverage, while an increase in height from 20m to 25m leads to a 19% increase in coverage, as this generally allows the mast to clear surrounding trees. We have therefore allowed

¹ http://stakeholders.ofcom.org.uk/binaries/research/infrastructure/2015/downloads/connected_nations2015.pdf

² <http://stakeholders.ofcom.org.uk/market-data-research/market-data/infrastructure/infrastructure-2014/>

³ (<https://www.gov.uk/government/news/government-secures-landmark-deal-for-uk-mobile-phone-users>)

new, taller masts to be installed, including on article 2(3) land. Given that impacts on local communities could be significant, however, the siting and appearance of new masts is subject to prior approval from the local authority. This will allow the local authority to engage with local communities and consider, in particular, the visual impact of the mast on the surrounding area.

- 7.9 We have sought to maximise the use of existing sites and minimise the need for new ground-based masts, by extending permitted development rights to allow existing masts to be altered or replaced. On unprotected land the height limit is increased from 20 metres to the greater of the existing height or 25 metres (20 metres on a highway), and a new permitted development right to alter or replace masts on article 2(3) land is introduced. Prior approval is required for the most significant impacts: where height is increased and the mast is above 20 metres. Where prior approval is not required, a new condition requires the siting and appearance of the mast to minimise visual impact so far as practicable.
- 7.10 We have also sought to minimise the number of new ground-based masts needed by removing restrictions on the installation, alteration or replacement of infrastructure where impacts are less significant. In particular, we have removed limitations on small cell systems on buildings (other than dwellinghouses), and have removed certain restrictions relating to small and larger antenna.
- 7.11 Where prior approval is required for the installation, alteration or replacement of a mast within 3 kilometres of the perimeter of an aerodrome, the developer is required to notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate. This requirement previously applied only to the installation of a new mast. However, as a result of changes introduced by this Order, alteration or replacement works may increase the height of the mast to between 20-25 metres (see paragraph 7.9). We have extended the notification requirement to cover these more significant cases, where prior approval is required.
- 7.12 Finally, to help ensure, in an emergency, that adequate time is available for operators to secure an alternative permanent site, we have extended the period during which development can be undertaken in an emergency from 6 to 18 months, unless the need ceases earlier. The Order continues to allow specified development (excluding the installation, alteration or replacement of a mast) to be undertaken in a SSSI in emergency circumstances. This is subject to the extended 18 month maximum period, and to a new condition which requires Natural England to be notified.
- 7.13 In addition to the in-built protections described above, these measures will operate alongside the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (S.I. 2003/2553). These are amended by the Electronic Communications Code (Conditions and Restrictions) (Amendment) Regulations 2016 to reflect the measures described above, but will continue to allow the local planning authority to impose reasonable conditions on development. Development involving mobile infrastructure will also be subject to the guidance contained in the Code of Best Practice on Mobile Network Development in England, published in July 2013⁴.

⁴ <http://www.mobilemastinfo.com/2013/new-code-of-best-practice-on-mobile-network-development-in-england-published.html>

Consolidation

- 7.14 The General Permitted Development Order, which came into force on 15 April 2015, consolidates amendments made to the General Permitted Development Order 1995. This is the second Order to amend the General Permitted Development Order 2015. There are no current plans for a consolidation.

8. Consultation outcome

- 8.1 The Department for Communities and Local Government and the Department for Culture Media and Sport published a Call for Evidence on 10 July 2015 seeking views on how the planning system in England can best support mobile connectivity. Forty responses were received from various respondents from the telecommunications industry, local authorities, local amenity groups and private individuals.
- 8.2 The majority of respondents agreed that digital connectivity is now an essential service. The telecommunications industry reported that, while the vast majority of planning applications for mobile infrastructure are approved, the time this takes can vary, and is sometimes longer than 8 weeks. The industry generally favoured increased permitted development rights without a requirement for prior approval.
- 8.3 Local authorities and amenity groups considered that permitted development rights with prior approval generally struck the right balance between allowing appropriate development and protecting local amenity. In article 2(3) land, amenity groups considered that proposals for new masts should be considered through a full planning application process so that local authorities could balance the need for new infrastructure with the need to protect local landscapes and amenity on a case by case basis. There was consensus that permitted development rights should not generally apply in land which is a site of special scientific interest.
- 8.4 Having reviewed these responses, the government decided to adopt the measures described in paragraph 7 above, which it considers balance the need to support increased mobile coverage with the need to control and minimise impacts, maintaining local engagement where impacts are most significant. These measures were announced in a Written Ministerial Statement on 17 March 2016.

9. Guidance

- 9.1 There are no plans to issue specific guidance for this statutory instrument.

10. Impact

- 10.1 These changes are deregulatory and reduce the burden on business and the cost and time for businesses in not having to apply for planning permission or, in some cases, prior approval.
- 10.2 The changes increase permitted development rights for mobile operators to support the swifter roll-out of 4G, whilst providing greater connectivity and capacity for 3G and 2G (voice only). As users of electronic communications, charities and voluntary bodies will benefit from these developments.
- 10.3 A validation impact assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.
- 10.4 This shows that there will be reduced costs of seeking planning approval for mobile telecommunications infrastructure, including 4G (average annual benefit £2.1m) and

reduced costs of emergency works as a result of a longer duration of permitted development (average annual benefit £9.0m). Reduced uncertainty for business and potential increased coverage is shown to lead to improved digital connectivity.

11. Regulating small business

- 11.1 The legislation is deregulatory in effect and whilst mobile operators (which are large businesses) will benefit directly from the changes, small businesses and those working at home, particularly in rural areas, will also benefit from having improved access to 4G superfast broadband or better connectivity through 3G and 2G (voice only). We do not consider there will be any negative impact on small businesses.

12. Monitoring & review

- 12.1 The Small Business, Enterprise and Employment Act 2015 requires that regulatory provisions made after 1 July 2014 are reviewed 5 years after their commencement to consider whether the objectives could be achieved with less regulation. A clause requiring such a review was inserted into the General Permitted Development Order by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (S.I 2016/332). These permitted development rights will be reviewed at the latest by October 2021.

13. Contact

- 13.1 Paul Martin at the Department for Communities and Local Government, telephone: 0303 444 1668 or email: paulg.martin@communities.gov.uk can answer any queries regarding the instrument.