

Statutory Instrument 2001 No. 2718

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

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STATUTORY INSTRUMENTS 2001 No. 2718 TOWN AND COUNTRY PLANNING, ENGLAND

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

Made 25th July 2001

Laid before Parliament 1st August 2001

Coming into force 22nd August 2001

The Secretary of State for Transport, Local Government and the Regions, in the exercise of powers conferred on him by sections 59, 60, 61(1) and 333(7) of the Town and Country Planning Act 1990[1], and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and extent

1. - (1) This Order may be cited as the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2001 and shall come into force on 22nd August 2001.

(2) This Order extends to England only.

Interpretation

2. In this Order, "the 1995 Order" means the Town and Country Planning (General Permitted Development) Order 1995[2], and any reference to Part 24 is a reference to that numbered Part of Schedule 2 to the 1995 Order.

Changes to Part 24: Development by telecommunications code system operators

3. For Part 24 substitute:

PART 24

DEVELOPMENT BY TELECOMMUNICATIONS CODE SYSTEM OPERATORS

Class A Permitted Development

A. Development by or on behalf of a telecommunications code system operator for the purpose of the operator's telecommunication system in, on, over or under land controlled by that operator or in accordance with his licence, consisting of -

(a) the installation, alteration or replacement of any telecommunication apparatus,

(b) the use of land in an emergency for a period not exceeding six months to station and operate moveable telecommunication apparatus required for the replacement of unserviceable telecommunication 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

A.1 Development is not permitted by Class A(a) if -

(a) in the case of the installation of apparatus (other than on a building or other structure) 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 apparatus already installed (other than on a building or other structure), 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, alteration or replacement of apparatus on a building or other structure, the height of the apparatus (taken by itself) would exceed -

- (i) 15 metres, where it is installed, or is to be installed, on a building or other structure which is 30 metres or more in height; or
- (ii) 10 metres in any other case;

(d) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building or structure by more than -

- (i) 10 metres, in the case of a building or structure which is 30 metres or more in height;
- (ii) 8 metres, in the case of a building or structure which is more than 15 metres but less than 30 metres in height; or
- (iii) 6 metres in any other case;

(e) in the case of the installation, alteration or replacement of apparatus (other than an antenna) on a mast, the height of the mast would, when the apparatus was installed, altered or replaced, exceed any relevant height limit specified in respect of apparatus in paragraphs A.1(a), (b), (c) and (d), and for the purposes of applying the limit specified in sub-paragraph (c), the words "(taken by itself)" shall be omitted;

(f) in the case of the installation, alteration or replacement of any apparatus other than -

- (i) a mast,
- (ii) an antenna,
- (iii) a public call box,
- (iv) any apparatus which does not project above the level of the surface of the ground, or
- (v) radio equipment housing, the ground or base area of the structure would exceed 1.5 square metres;

(g) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a mast) which is less than 15 metres in height; on a mast located on such a building or structure; or, where the antenna is to be located below a height of 15 metres above ground level, on a building or structure (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 or structure on which the antenna is to be located;

(iii) in the case of dish antennas, the size of any dish would exceed 0.9 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 1.5 metres, when measured in any dimension;

(iii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna) would result in the presence on the building or structure of more than two antenna systems; or

(iv) the building or structure is a listed building or a scheduled monument;

(h) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a mast) which is 15 metres or more in height, or on a mast located on such a building or structure, 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 of the dishes on the building,

structure or mast would exceed 3.5 metres, when measured in any dimension;

(ii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of a maximum of two small antennas) would result in the presence on the building or structure of more than three antenna systems; or
(iii) the building or structure is a listed building or a scheduled monument;

(i) in the case of development (other than the installation, alteration or replacement of one small antenna on a dwellinghouse or within the curtilage of a dwellinghouse) on any article 1(5) land or any land which is, or is within, a site of special scientific interest, it would consist of -

(i) the installation or alteration of an antenna or of any apparatus which includes or is intended for the support of such an antenna; or
(ii) the replacement of such an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced, unless the development is carried out in an emergency;

(j) it would consist 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[3] (definitions of driver information systems etc.);

(k) in the case of the installation of a mast, on a building or structure which is less than 15 metres in height, such a mast would be within 20 metres of a highway;

(l) in the case of the installation, alteration or replacement of radio equipment housing -

- (i) the development is not ancillary to the use of any other telecommunication apparatus;
- (ii) the development would exceed 90 cubic metres or, if located on the roof of a building, the development would exceed 30 cubic metres; or
- (iii) on any article 1(5) land, or on any land which is, or is within, a site of special scientific interest, the development would exceed 2.5 cubic metres, unless the development is carried out in an emergency;

(m) in the case of the installation, alteration or replacement on a dwellinghouse or within the curtilage of a dwellinghouse of any telecommunication apparatus, that apparatus -

- (i) is not a small antenna;
- (ii) being a small antenna, would result in the presence on that dwellinghouse or within the curtilage of that dwellinghouse of more than one such antenna; or
- (iii) being a small antenna, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;

(n) in the case of the installation, alteration or replacement on article 1(5) land of a small antenna on a dwellinghouse or within the curtilage of a dwellinghouse, the antenna is to 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;

(o) 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 -

- (i) the building is on article 1(5) land;
- (ii) the building is less than 15 metres in height, and the development would result in the presence on that building of more than one such antenna; or
- (iii) the building is 15 metres or more in height, and the development would result in the presence on that building of more than two such antennas.

Conditions

A.2 (1) Class A(a) and Class A(c) development is permitted subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, 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.

(2) Class A(a) and Class A(c) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall be removed from the land, build-

ing or structure on which it is situated -

(a) if such development was carried out in an emergency on any article 1(5) land or on any land which is, or is within, a site of special scientific interest, at the expiry of the relevant period, or

(b) in any other case, as soon as reasonably practicable after it is no longer required for telecommunication 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 local planning authority and the developer.

(3) Class A(b) development is permitted subject to the condition that any apparatus or structure provided in accordance with that permission shall at the expiry of the relevant period be removed from the land and the land restored to its condition before the development took place.

(4) Class A development -

(a) on article 1(5) land or land which is, or is within, a site of special scientific interest, or

(b) on any other land and consisting of the construction, installation, alteration or replacement of a mast; or of an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 4 metres or more; or of a public call box; or of radio equipment housing with a volume in excess of 2.5 cubic metres; or of development ancillary to radio equipment housing - is permitted

subject, except in case of emergency, to the conditions set out in A.3.

A.3 (1) The developer shall give notice of the proposed development to any person (other than the developer) who is an owner of the land to which the development relates, or a tenant, before making the application required by paragraph (3) -

(a) by serving a developer's notice on every such person whose name and address is known to him; and

(b) where he has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement.

(2) Where the proposed development consists of the installation of a mast within 3 kilometres of the perimeter of an aerodrome, the developer shall notify the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as appropriate, before making the application required by paragraph (3).

(3) Before beginning the development, the developer shall 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 the development.

(4) The application shall be accompanied -

(a) by a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid;

(b) where paragraph (1) applies, by evidence that the requirements of paragraph (1) have been satisfied; and

(c) where paragraph (2) applies, by 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.

(5) Subject to paragraphs (7)(c) and (d), upon receipt of the application under paragraph (4) the local planning authority shall -

(a) for development which, in their opinion, falls within a category set out in the table of article 10 of the Procedure Order, 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 shall 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 III of the Wildlife and Countryside Act 1981[4] (public rights of way) applies, shall give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order -

(i)
(aa) 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)
(bb) 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, shall give notice of the proposed development, in the appropriate form set out in Schedule 3 to the Procedure Order -

(i)
(aa) 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

(bb) by serving notice on any adjoining owner or occupier, and
(ii) by local advertisement;

(d) in the case of development which does not fall within (b) or (c), shall give notice of the proposed development, in the appropriate form set out in Schedule 3 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 the notice on any adjoining owner or occupier.

(6) The local planning authority shall take into account any representations made to them as a result of consultations or notices given under A.3, when determining the application made under

paragraph (3).

(7) The development shall not be begun 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 such prior approval is not required;

(b) where the local planning authority gives the applicant written notice that such prior approval is required, the giving of that approval to the applicant, in writing, within a period of 56 days beginning with the date on which they received his application;

(c) where the local planning authority gives the applicant written notice that such prior approval is required, the expiry of a period of 56 days beginning with the date on which the local planning authority received his application without the local planning authority notifying the applicant, in writing, that such approval is given or refused; or

(d) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without the local planning authority notifying the applicant, in writing, of their determination as to whether such prior approval is required.

(8) The development shall, 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 paragraph (7)(b) in accordance with the details approved;

(b) in any other case, in accordance with the details submitted with the application.

(9) The development shall be begun -

(a) where prior approval has been given as mentioned in paragraph (7)(b), not later than the expiration of five years beginning with the date on which the approval was given;

(b) in any other case, not later than the expiration of five years beginning with the date on which the local planning authority were given the information referred to in paragraph (4).

(10) In a case of emergency, development is permitted by Class A subject to the condition that the operator shall give written notice to the local planning authority of such development as soon as possible after the emergency begins.

Interpretation 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 or structure and operated by a single telecommunications code system operator in accordance with his licence;

"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;

"development in accordance with a licence" means development carried out by an 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 by the terms of his licence;

"developer's notice" means a notice signed and dated by or on behalf of the developer and containing -

- (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 and 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 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 shall be 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.

"land controlled by the operator" means land occupied by the operator in right of a freehold interest or a leasehold interest under a lease granted for a term of not less than 10 years;

"local advertisement" means by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated;

"mast" means a radio mast or a 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 seven years remain unexpired;

"Procedure Order" means the Town and Country Planning (General Development Procedure) Order 1995[5];

"relevant period" means a period which expires -

- (i) six months from the commencement of the construction, installation, alteration or replacement of any apparatus or structure permitted by Class A(a) or Class A(c) or from the commencement of the use permitted by Class A(b), as the case may be, or
- (ii) when the need for such apparatus, structure or use ceases,

whichever occurs first;

"site display" means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public;

"small antenna" means an antenna which -

- (i) is for use in connection with a telephone system operating on a point to fixed multi-point basis;

(iii) does not exceed 50 centimetres in any linear measurement; and (iii) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres, and any calculation for the purposes of (ii) and (iii) shall exclude any feed element, reinforcing rim mountings and brackets;

"telecommunication apparatus" means apparatus falling within the definition of that term in paragraph 1 of Schedule 2 to the Telecommunications Act 1984[6] ("the 1984 Act") (the telecommunications code), and includes radio equipment housing;

"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 (power to license systems) which applies the telecommunications code to him in pursuance of section 10 of that Act (the telecommunications code);

"telecommunications system" has the meaning assigned to that term by section 4(1) of the 1984 Act (meaning of "telecommunication system" and related expressions);

"tenant" means the tenant of an agricultural holding any part of which is comprised in the land to which the application relates."

Revocation and transitional provisions

4. - (1) Subject to paragraph (2), article 3 of the Town and Country Planning (General Permitted Development) (Amendment) Order 1998[7] and article 3 of the Town and Country Planning (General Permitted Development) (Amendment) Order 1999[8] are hereby revoked so far as they extend to England.

(2) The amendments made to the 1995 Order by this Order shall not apply in relation to applications for a determination as to whether the prior approval of the local planning authority will be required to the siting and appearance of the development made before the coming into force of this Order.

Signed by the authority of the Secretary of State for Transport, Local Government and the Regions

Sally Keeble

Parliamentary Under-Secretary of State Department for Transport, Local Government and the Regions, 25th July 2001

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) Order 1995, in relation to permitted development rights for certain telecommunications development. Where such rights apply no specific application for planning permission is needed.

Article 3 substitutes with amendments Part 24 of Schedule 2 to the 1995 Order which confers permitted development rights in respect of development by telecommunications code system operators. The principal change is the introduction of a revised prior approval procedure. As set out at paragraph A.2(4), the revised procedure applies to development on article 1(5) land or land which is, or is

within, a site of special scientific interest, or where the development consists of the installation, alteration or replacement of:

- (i) a mast;
- (ii) an antenna on a building or structure where the antenna would exceed the height of the building by 4 metres or more;
- (iii) a public call box;
- (iv) radio equipment housing with a volume in excess of 2.5 cubic metres; or
- (v) development which is ancillary to radio equipment housing.

Article 3 introduces into the procedure, at paragraph A.3(1) of Part 24, a requirement for the developer to notify the owner, or agricultural tenant, of the land to which the proposed development relates, before making an application to the local planning authority for a determination as to whether prior approval is required. In addition, paragraph A.3(5) of Part 24 requires the local planning authority, upon receipt of such an application, to consult with certain persons and authorities and to issue certain notices. Paragraph A.3(6) requires the local planning authority to take into account representations received by them when determining the application.

Under the new paragraph A.3(7) of Part 24 the local planning authority has 56 days within which to determine the application. The development may proceed once that period has expired, if:

- (i) the authority, having notified the applicant that prior approval is required, fail to notify him that the approval is given or refused; or

- (ii) the authority fail to notify the applicant of their determination as to whether prior approval is required.

Other minor changes are made to Part 24, mainly of a clarificatory nature.

A Regulatory Impact Assessment has been prepared in relation to this Order. It has been placed in the library of each House of Parliament and copies may be obtained from PD3 Division at Zone 4/J3, Department for Transport, Local Government and the Regions, Eland House, Bressenden Place, SW1E 5DU, tel: 020 7944 3947.

Notes:

- [1] 1990 c. 8, to which there are amendments not relevant to this Order. The functions of the Secretary of State under sections 59, 60, 61(1) and 333(7) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see entry in Schedule 1 for the Town and Country Planning Act 1990 (c. 8).back
- [2] S.I. 1995/418, relevant amending instruments are S.I. 1998/462 and S.I. 1999/1661.back
- [3] 1989 c. 22.back
- [4] 1981 c. 69.back
- [5] S.I. 1995/419.back
- [6] 1984 c. 12, section 10 was amended by S.I. 1997/2930.back
- [7] S.I. 1998/462.back
- [8] S.I. 1999/1661.back