

REGULATORY APPRAISAL

TOWN AND COUNTRY PLANNING, WALES

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (AMENDMENT) (WALES) ORDER 2006

Background

Television and Digital Switchover

1. The number of Digital Television viewers continues to grow strongly with over 50% of households having switched. Demand is expected to remain strong, particularly as the impact of the UK Government's proposals for digital switchover (analogue switch-off between 2008 and 2012 in the UK as a whole and in 2009 in Wales) become more apparent. This will free up significant radio spectrum for new services. But, some households may never be able to receive digital terrestrial services of acceptable quality, and will have to rely on satellite broadcasts to receive the free to air public services (BBC, ITV1, S4C, Channel 4, Five and Teletext).
2. Alternative technologies have emerged (e.g. wireless, satellite and power line), which may help prevent the creation of a new 'digital divide' so everyone may access these services, which offer economic and social benefits for the UK.
3. However, the subject of antennas and particularly satellite dishes can be an emotive one. The subject of how such services are transmitted to the home often polarises opinion between those who advocate unrestricted use of satellite dishes and those who would prefer such equipment to be completely hidden from view.

Broadband

4. There is an increasing demand for a multitude of electronic communications services for business, consumer and public service applications that cannot be delivered universally across the country by traditional methods (i.e. telephone lines or TV aerials), but may need to be served by alternative technologies such as wireless (served by an antenna) or satellite broadband.

Purpose and intended effect of the measure

5. This Order amends the Town & Country Planning (General Permitted Development) Order 1995, as it relates to the permitted number, size and location of satellite dishes and other antennas in Wales. The changes are to ensure the provisions are up to date, taking into account the changes in technology, such as the development of broadband delivery and striking a balance between the ability to carry out small scale, uncontentious development and the need to control where impacts are likely to be greater.
6. The principal intention is to deregulate, with the intention to remove the distinctions that currently exist between the types of antenna (e.g. satellite dish antennas and mesh antennas) and to relax the planning regulations covering permitted development right for these antennas.

Risk Assessment

7. The proposed changes would facilitate the take up of technological advances such as the development of broadband delivery. For many reasons, not to legislate in this way is unsatisfactory. Such a solution maintains a differentiation between antenna types, which is unnecessarily restrictive and is difficult to defend given the commitment, reflected in the Communications Act 2003, to having equivalent treatment for different modes of television reception.
8. In addition, to maintain the status quo would restrict choice resulting in an artificial constraint on digital TV and broadband take-up (particularly in households with multiple equipment) as those users who require antennas to access services could be dissuaded from obtaining them by the requirement for (and expense of) applying for planning permission.

Options

Option 1: Do Nothing

9. Current permitted development rights continue to, in the main, enable only one dish per property and restrict the use of small antennas. Specific planning permission would still be needed from a local planning authority for further antennas (and a planning fee payable) and consumer choice of services would continue to be inhibited.

Option 2: Make the Legislation

10. Changing permitted development rights will allow wider choice for consumers by removing the distinctions that currently exist between the types of antenna and relaxing the planning Regulations covering permitted development rights for these antennas.

Benefits

11. The Order offers technological neutrality in that no single method of electronic communications transmission, whether via satellite dish, fixed wireless antenna, or anything else (excluding TV aerials), is treated any differently from any other. The number of antennas does not change, although technological neutrality means that (in the case of dwelling houses) 2 antennas (of any type) will be permitted where, previously, it was specified as one dish and one 'small' antenna. However, there will be a slight relaxation in the Regulations on siting. In the case of tall buildings, the number of antennas does not change in that 4 antennas (of any type) will be permitted where, previously, it was specified as 2 antennas and 2 'small' antennas.
12. The hilly terrain of Wales means that we have the highest density of television transmitters and relays in the UK (some 20% of the total number of transmitters in the UK). Despite this, we also have the lowest coverage of terrestrial TV: 96.7% of households compared to a UK average of 98.5%. In addition, a section of that 96.7% can only receive terrestrial TV from transmitters in England, meaning that they do not have access to BBC Wales, ITV1 Wales or S4C if they use an aerial to receive TV. This is an obstacle to an informed democracy in

Wales. Many viewers in Wales, therefore, rely on satellite TV for their television services. With the introduction of a FreeSat (subscription-free) package by BskyB in 2004, and another FreeSat package by BBC and ITV to come in 2006, satellite TV is now also more affordable than it used to be. For households reliant on satellite TV, the current Part 1.H permitted development rights enable only one antenna to be installed on dwelling houses, thus requiring an individual choice (unless planning permission is obtained from the local planning authority for the installation of a second antenna) of either a satellite TV service or broadband service. Extending permitted development rights to permit a second antenna widens choice. Specific planning permission would not be required to install the second antenna and the individual planning fee would be saved.

Costs

13. There are no additional financial implications for the Assembly or local authorities from the making of this Order. The changes to permitted development rights are deregulatory in nature and will result in less planning applications for the 25 local planning authorities in Wales to determine. The cost of preparing and processing this Order can be met from existing and planned administration costs budgets.

Impact on small business

14. The Order does not have any additional financial implications for small businesses. The impact of planning delays on business generally is magnified for small businesses. Lack of speed and certainty imposes significant costs on them. Many small businesses cannot afford the time and money to await the outcome of planning applications. Extending permitted development rights, as proposed, offers greater certainty to small businesses as building occupiers. Where a specific planning application is no longer needed, the individual planning application fee is saved. As part of the consultation exercise, the Federation of Small Businesses (Wales) was also consulted, but did not respond.

Impact on others

15. All property occupiers, whether commercial or householder, would benefit from extended permitted development rights giving greater freedom to install antennas.

Competition Assessment

16. It is difficult to accurately determine how the proposed change would affect supply and demand in this technologically driven area.

17. The proposals will affect all providers, both existing and new entrants. However, as the proposals are largely de-regulatory, they are therefore unlikely to affect the demand for satellite dishes or other antennas adversely. Indeed, technological neutrality ensures that different technologies (including new and emerging ones) are afforded the same treatment as existing ones, such as satellite dishes. In addition, the planning Regulations for all antennas are relaxed, thus facilitating easier access to antenna-based services. However, it is thought planning restrictions could limit potential growth (for all types of antenna) in this area.

18. As the changes are largely in line with current technological practice, it is not therefore thought that any section of the communications or broadcasting

industry would either be impaired or favoured by the proposals. The proposals are not intended to bring about any market advantage or disadvantage for any specific sector of the industry. The proposals do not change the way service industries can market or price their products and services. However, some existing companies who have current market-share advantages could use these changes to increase their sales and/or market share.

19. If the Regulations associated with installing antenna and satellite are relaxed, we could expect to see a rise in the availability of wireless broadband across Wales, as providers are able to install greater numbers of antennae and satellite dishes. This could give a boost to competition across the wireless sector, which will be of benefit to business and consumers across Wales.

Consultation

With Stakeholders

20. A consultation paper "Satellite dishes and other antennas: Changes to Planning Regulations" issued in Wales on 27 October 2003 inviting views by 20 January 2004 from a range of business organisations, professional bodies, the Welsh Local Government Association and voluntary sector groups. A list of consultees is attached at Annex 1. It set out 5 options for changes to the GPDO provisions, ranging from Option 1 (no change), Option 2 (moderate deregulation) to Options 3-5 (increasing degrees of deregulation). Each of the options set out in the consultation paper is considered in Annex 2. In all cases, special conditions would apply to Article 1(5) land (National Parks, Areas of Outstanding Natural Beauty and Conservation Areas).
21. Twelve substantive replies were received. A voluntary conservation body (the Council for National Parks) favoured Option 1 and was against any change to present arrangements. Five responses were made by business (BSkyB, BT, Intellect, ISBA and Orange) and there was agreement that more freedom is needed with a marked preference for Option 4 for both "dwelling houses" and Article 1(5) land. In the case of "other buildings", business had a preference for permutations of Options 3 and 4, distinguishing between whether it was a residential or commercial building. A National Park resident and the Brecon Beacons National Park Authority commented only on the different options for Article 1(5) land. The member of the public considered that Option 1 was untenable; Option 2 made little practical improvement; Option 3 was acceptable and solved current problems but as a principle he favoured an option entailing minimal regulation. The National Park felt that Option 2 came closest to their wish of enabling dishes to be sited on a roof adjacent to or below chimney stacks, where they would have a much less visual impact on the streetscape.
22. One local authority (Caerphilly County Borough Council) commented and they favoured a modified, more restricted, Option 2. Two professional bodies (Royal Town Planning Institute (RTPI) in Wales and the Law Society) also commented. The RTPI preferred their own option (one fronting antenna with 2 additional antennas at the rear), but also appear to endorse Option 3 for "dwelling houses", Option 2 (with some riders) for Article 1(5) land and felt that there was a need to distinguish between domestic buildings and commercial buildings in the treatment

of "other buildings". For their part, the Law Society made some generalised comments, e.g. that they would not support differentiation between Wales and England merely for the sake of separating the systems in Wales and England. The Welsh Development Agency favoured Option 2 for both "dwelling houses" and Article 1(5) land, but Option 3 (with the proviso that more antennas should be allowable depending on the number of businesses in the building) for "other buildings". They also felt that dwelling houses should be treated the same regardless of being within Article 1(5) land, albeit that front or road facing dishes should be the last resort.

With Subject Committee

23. This Order was notified to the Environment, Planning, and Countryside Committee via the list of forthcoming legislation on 5 October 2005 (Item 8, Paper EPC (2)-11-05(p7)), but was not identified for detailed scrutiny.

Review

24. These proposed changes would not be the subject of a specific monitoring exercise as the Town and Country Planning General Permitted Development Order as a whole will be the subject of periodic review.

Summary

25. The effect of the proposed Order is to amend Parts 1.H and 25 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 and the key changes are:

(a) Dwelling houses (or within their curtilage)

- Two antenna permitted (one up to 60cm, the second up to 100cm);
- Any chimney mounted antenna limited to 60cm;
- Technological neutrality is introduced in that no single method of electronic communications transmission is treated any differently from another;
- Siting restrictions are relaxed (where there is a chimney on the roof, an antenna may be erected on the apex of a roof); and
- In the case of Article 1(5) land, restrictions on fronting antenna remain but only where the roof slope, wall or chimney is visible from a highway.

(b) Buildings or structures of 15 metres or more in height (which are not dwellinghouses)

- Four antenna permitted (limited to 60cm if chimney mounted, 1.3 metres in any other case);
- Technological neutrality is introduced; and

- In the case of Article 1(5) land, antenna are permitted provided that they do not front a roof slope, wall or chimney which is visible from a highway.

(c) Buildings or structures of less than 15 metres in height (which are not dwellinghouses)

- Two antenna permitted (one up to 60cm; the second up to 100cm);
- Any chimney mounted antenna limited to 60cm;
- Technological neutrality is introduced;
- Siting restrictions are relaxed (where there is a chimney on the roof, an antenna may be erected on the apex of a roof); and
- Restrictions on fronting antenna will apply only in the case of Article 1(5) land where the roof slope, wall or chimney is visible from a highway.

(d) Small antenna

Provision is made in the proposed order so that any small antenna permitted under Part 24, which may be present, are reckonable towards the overall number of antenna permitted under Part 1.H, 25A and 25B.

26. This Order is de-regulatory, achieves technological neutrality, but is the most restrictive of the options for change. Nevertheless, this Order should achieve access to both satellite TV and broadband for most of the country, whilst minimising as far as possible the environmental effects of these changes. Both businesses and households will benefit from the proposed changes at no additional cost.

Annex 1

List of Consultees

Manorbier Community Council
Planning Officers Society of Wales
Council for National Parks
Royal Town Planning Institute
Campaign for the Protection of Rural Wales
National Association of Local Councils
The Civic Trust for Wales
Wales Association of Community and Town Councils
Welsh Local Government Association
Wales Wildlife and Countryside Link
University of Aberystwyth Department of Computer Science
BBC
BskyB
British Telecom
Confederation of Aerial Industries
Eutelsat
Radiant Networks
Welsh Federation of Housing Associations
Countryside Council for Wales
Chartered Institute of Housing in Wales
Media Technology Programmes Welsh Development Agency
National Air Traffic Services Ltd
Association of Retail Operators
Federation of Small Businesses (Wales)
Consumers Association
Welsh Consumers Council
Joseph Rowntree Foundation
The National Retail Planning Forum
Richard Rogers Partnership
Wales Tourism Board
British Film Institute
Royal Institute of Chartered Surveyors in Wales
Brecon Beacons National Park Authority
CBI Wales
Pembrokeshire Coast National Park
Snowdonia National Park Authority
Welsh Historic Gardens Trust
Wales Assembly of Women
Housebuilders Federation
Department of Trade & Industry
Department of Culture Media & Sport
Cabinet Office
Radiocommunications Agency
Scottish Executive
The Planning Service
Department for Transport

DEFRA
ODPM
Civil Aviation Authority
Commission for Racial Equality Wales Office
All Wales Ethnic Minority Association (AWEMA)
Equal Opportunities Commission
Wales Women's National Coalition
Disability Wales

Annex 2

Summary of Options in Consultation Paper

Option 1

This option maintains the status quo. Currently the GPDO differentiates between the different types of antenna: satellite dish antennas being permitted up to a specific size (by length) and non-dish antennas being permitted by measured area (square footage). This means that those who wish to access both satellite TV and broadband via dish would need planning permission for the second dish. In addition other antennas, including future technological innovations, not conforming to the square footage measurement would conceivably not be considered as permitted development, and might result in householders having to make planning applications for small, non-contentious installations.

Option 2

This option is a moderate deregulatory change. It offers technological neutrality, in that no single method of electronic communications transmission, whether via satellite dish, fixed wireless antenna, or anything else (excluding TV aerials), is treated any differently than any other. The numbers of antennas does not change, although technological neutrality means that (in the case of dwelling houses) 2 antennas (of any type) will be permitted where, previously, it was specified as one dish and one 'small' antenna. However, there will be a slight relaxation in the regulations on siting. In the case of tall buildings, the number of antennas does not change in that 4 antennas (of any type) will be permitted where, previously, it was specified as 2 antennas and 2 'small' antennas.

Option 3

This option offers an increased level of deregulation. It also offers technological neutrality, but with a greater relaxation on the regulations as regards antenna numbers and siting. Dwelling houses are permitted a third (non-fronting) antenna; in Article 1(5) land a single fronting antenna is permitted (2 antennas overall); tall buildings are permitted an additional 2 antennas, taking the number to 6.

Option 4

This option increases the deregulation still further. Dwelling houses are permitted three fronting antennas, if one is roof-mounted; in Article 1(5) land two fronting antennas are permitted (or 3 overall); tall buildings are permitted 8 antennas, if 4 are roof-mounted. In addition, some of the restrictions on size and siting are further relaxed.

Option 5

This option offers the maximum level of access to satellite and other telecommunications services, with virtually no restrictions as to the numbers or size of the antennas, or their siting on the property. Article 1(5) land is subject to a low level of regulation, broadly similar to Option 4 for dwelling houses.