

Planning Committee

10am, Thursday, 15 May 2014

Scottish Government Consultation on Changes to Permitted Development Rights for Telecommunications

Item number	11.1
Report number	
Executive/routine	Executive
Wards	All

Executive summary

The Scottish Government has recently undertaken a consultation on proposed changes to the permitted development rights for development by Telecommunications Code operators. The changes would significantly reduce the number of proposals that require express planning permission, including proposals within designated areas. The purpose of this report is to invite the Committee to retrospectively approve a provisional response that was submitted to the Scottish Government before the deadline for submissions on 18 April 2014.

Links

Coalition pledges	P15 , P17 ,
Council outcomes	CO7 , CO8 , CO18 , CO19 , CO23
Single Outcome Agreement	SO1 , SO4

Scottish Government Consultation on Changes to Permitted Development Rights for Telecommunications

Recommendations

- 1.1 It is recommended that the Committee approves the Council's response to the consultation on changes to permitted development rights for development by Telecommunications Code operators.

Background

- 2.1 The Town and Country Planning (Scotland) Act 1997 contains powers for Scottish Ministers to make a General Permitted Development Order (GPDO) that grants planning permission for certain classes of development without the requirement to make a formal planning application to the Planning Authority. The granting of permission in this way is often referred to as permitted development (PD) rights. Permission is granted for those classes of development, provided that the development complies with certain restrictions and conditions, as identified within the schedule of the Order. The order currently in force is the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).

Main report

- 3.1 The Scottish Government has a vision for World Class digital connectivity in Scotland by 2020. It also considers that planning has a crucial role to play in supporting delivery of this infrastructure and facilitating appropriate proposals in the right locations. The Scottish Government, in taking forward this commitment, is considering removing some of the unnecessary legislative requirements for telecommunications development. It has sought views on a series of proposed amendments to the permitted development rights that apply to telecoms development under Classes 67 and 68 of the GPDO. The consultation paper can be viewed by following the link under Background Reading.
- 3.2 The aim is to deliver more telecommunications proposals efficiently, through a reduced requirement to seek planning permission. The Scottish Government considers that permitted development rights should:

- Maintain effective control of developments which, because of environmental consequences or relationship with other uses, need to be subject to specific planning control; and
 - Be wide enough to cover in an appropriate way, those developments which in general do not damage amenity and therefore in general do not require an application for planning permission.
- 3.3 The proposals also seek to achieve consistency with the wider permitted development rights that have been introduced in England and which are proposed in Wales.
- 3.4 The consultation paper sets out a series of proposed amendments to the GPDO and questions to which it seeks specific responses. The deadline for responses was 18 April 2014. Because of this timescale, it has not been possible to seek Committee's approval of the Council's response in advance. Therefore a provisional response has been submitted pending the Committee's decision.
- 3.5 The Council's response assesses the implications of the proposed changes. The Government's aim of updating the permitted development rights to help achieve world class digital connectivity and greater consistency with other administrations in the UK is supported. However, the proposed changes would not achieve the consistency that the Scottish Government is seeking as the scope of the PD rights would be wider in Scotland than in England and Wales.
- 3.6 Furthermore, the proposed changes could have a significant impact on built and natural heritage in Edinburgh by introducing permitted development rights for proposals within designated areas (sites of international and national importance, historic gardens/designed landscapes, category 'A' listed buildings, and scheduled monuments). As proposed, the suggested relaxations are too extensive, and Scottish Ministers should reconsider them in light of the comments set out in the Council's response.
- 3.7 The full response is attached to this report at Appendix 1. The main issues are as follows:
- The proposed changes to extend permitted development rights for telegraph poles within designated areas could significantly affect these areas of importance. There is insufficient evidence given to conclude the impact would be "negligible".
 - The proposed changes to allow the dimensions of existing masts to be increased outwith designated areas are acceptable. But the change to permitted development rights within designated areas raises concerns and could have a significant impact particularly with regard to category 'A' listed buildings.

- It is not clear from the paper if the suggested change from “antennas” to “antenna systems” applies to designated areas. The changes will provide significant flexibility that could impact significantly on designated areas.
- It is not clear from the paper if the suggested changes relating to the dimensions, height and number of antennas on buildings apply to designated areas. If it does, the changes could impact significantly on designated areas.
- The proposed change to small antenna, and the suggestion that the mounting should be included if it is a modest size is reasonable. But there are concerns regarding a proposed increase in the number of antennas on a dwelling house, particularly category 'A' listed buildings.
- The proposal that permitted development rights should be extended to ancillary equipment is reasonable, but it would be impracticable to define all such equipment.
- The proposal to extend the temporary period emergency equipment can be used from six months to one year is considered unnecessary and unjustified.
- The proposal to use an “aggregate” approach to antennas will be very difficult to implement and will lead to unintended loopholes.

Measures of success

4.1 The proposed actions will be measured as follows:

- When introduced the Scottish Government’s proposed changes to permitted development rights have been amended to reflect this Council’s position.

Financial impact

5.1 There are no financial impacts arising from this report.

Risk, policy, compliance and governance impact

- 6.1 Failure to agree the recommendations of this report will result in the Scottish Government not receiving the Council’s formal response to the proposed changes to permitted development rights.
- 6.2 The proposed changes could significantly reduce the number of proposals for electronic communications equipment that require planning permission. There is a risk that the changes will be detrimental to the quality of the built and rural environment in Edinburgh.

- 6.3 The report does not raise any health and safety, governance, compliance or regulatory issues other than those set out above.

Equalities impact

- 7.1 An Equalities Impact Assessment was prepared and subsequently updated by the Scottish Government as part of the process of preparing the consultation paper. It reports that there is no evidence that any of the equality strands will be adversely affected by the proposals. Details are available at <http://www.scotland.gov.uk/Publications/2014/03/4021/downloads>

Sustainability impact

- 8.1 The Scottish Government considers the consultation falls within the scope of Section 5(4) of the Environmental Assessment (Scotland) Act 2005. However, the Scottish Government considers that it can be viewed as exempt, as per section 7 of the 2005 Act, as it is likely to have no or minimal effects on the environment.
- 8.2 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered and the outcomes are summarised below. Relevant Council sustainable development policies have been taken into account:
- The proposals in this report will have no direct impact on carbon emissions as they relate to a consultation on changes to permitted development rights. There are no actual changes being implemented at this stage.
 - The need to build resilience to climate change impacts is not relevant to the proposals in this report because it relates to a consultation on changes to permitted development rights. There are no actual changes at this stage.
 - Social justice, Economic wellbeing and Environmental good stewardship is not considered to impact on the proposals in this report because it relates to a consultation on changes to permitted development rights. There are no actual changes at this stage.

Consultation and engagement

- 9.1 The Scottish Government published the consultation paper for a six-week consultation period from 7 March to 18 April 2014.

Background reading / external references

[Consultation Paper: Consultation on Changes to Permitted Development Rights for Development by Telecommunications Code Operators](#)

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Links

Coalition pledges	P15 Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors P17 Continue efforts to develop the city's gap sites and encourage regeneration
Council outcomes	CO7 Edinburgh draws in new investment in development and regeneration CO8 Edinburgh's economy creates and sustains job opportunities CO18 Green – We reduce the local environmental impact of our consumption and production CO19 Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm CO23 Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community
Single Outcome Agreement	SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all SO4 Edinburgh's communities are safer and have improved physical and social fabric
Appendices	Appendix 1: Response to Consultation on Changes to Permitted Development Rights for Development by Telecommunications Code Operators

ANNEX D: RESPONDENT INFORMATION FORM AND LIST OF QUESTIONS



Consultation on Changes to Permitted Development Rights for Development by Telecommunications Code Operators

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

City of Edinburgh Council

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Miller

Forename

Keith

2. Postal Address

Waverley Court

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Email

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

List of questions

Question 1

a) Do you agree with the proposal to amend PDR to allow the installation or replacement of telegraph poles in designated areas? **The Council has concerns about the proposed change to permitted development rights (PDR). The Edinburgh area includes numerous designated areas including international and national designations where proposals for new telegraph poles have been refused. The proposed changes would remove this restriction, and therefore introduce a new 'feature' in these areas without any appropriate means of control. The Council considers the consultation paper underestimates the impact of the proposed changes to designated areas, which do not just relate to small rural communities. The Council does not consider there is sufficient evidence given to conclude that any impact would be "negligible". Furthermore, the suggested changes appear to go beyond the revised system in England which does not extend PDR to replacement poles in designated areas. The Council does not consider the suggestion in paragraph 2.7 that the Electronic Code Regulations requirement to inform relevant authorities provides sufficient oversight, influence or control of such proposals.**

b) Should there be restrictions on any PDR and if so, what restrictions would be appropriate and why? **The Council considers that, in line with the revised English Order, proposals for replacement poles within designated areas should be subject to express planning permission.**

Question 2

a) Do you agree with the proposed increases to the dimensions of existing masts and attached equipment? **The Council considers that, outwith designated areas, the changes suggested are acceptable. However, it should be noted that the latest technological developments (4G) use a narrower band width and, as a result, less physical separation between antennas on the same mast is required to avoid interference. The Council has concerns about the proposed change to PDR in designated areas. In particular, the suggestion that mast width could be increased by up to 1m or 1/3 of the original width. Slim-line poles tend to be 650mm in width and are favoured in the Edinburgh urban environment for environmental and practical reasons. Whilst increasing the width by 1/3 would have a minor impact, allowing poles to increase to 1650mm could have significant consequences. The Council considers that, in line with the revised system in England, increases in width should be limited to 1/3 of the original mast size.**

b) Do you agree that PDR for such increases should apply to existing masts in all, or some, designated areas? **The Council considers that the consultation paper significantly underestimates the impact of extensions to existing masts, particularly with regard to the potential impact on conservation areas, category 'A' listed buildings and scheduled monuments. There may be circumstances within designated areas where extra height raises concerns**

that were not considered as part of the original application. In line with the revised English Order, the Council considers that developments in designated areas should be subject to planning permission.

Question 3

a) Do you agree that Class 67 should refer to antenna systems rather than antenna for the purposes of PDR for equipment installed on buildings? **The Council has some concerns about the suggested changes. It is not clear from the consultation paper as to whether the suggested changes are to apply to designated areas. The proposed changes could result in approximately 16 antennas being installed on buildings, whereas the English system allows up to approximately 12 antennas. There is a risk that the suggested change is too flexible, resulting in unintended consequences. The Council does not consider the changes should apply to designated areas, and therefore remain in line with the revised English system.**

b) Should the definition of antenna system include associated equipment housing, ancillary equipment (see paragraphs 2.34-2.36 below) or other structures? **No proposed definition of antenna system is given within the consultation paper other than a reference to the definition in the English system which the Council considers too loosely defined. The Council considers that associated structures can have more impact, depending on circumstances, than the antenna. Therefore the Council does not support the suggested change.**

Question 4

a) Do you agree that the criteria setting out the dimensions of antenna should be standardised/simplified? **It is not clear from the paper whether the suggested changes are to apply to designated areas. If so, the Council does have concerns. Standardising dimensions raises concerns as equipment at lower heights does have a greater visual impact than equipment at a higher heights.**

b) Do you agree with the proposal that the distinction between buildings over/under 15m be removed? **It is not clear whether the suggested changes are to apply to designated areas. If so, the Council does have concerns. Equipment at lower heights does have a greater visual impact that equipment at a higher heights and therefore dropping the distinction between different heights would have a increased visual impact.**

c) Do you agree with the proposed number of antenna (or antenna systems as the case may be) that would be permitted on a single building under PDR? **It is not clear whether the suggested changes are to apply to designated areas. If so, the Council does have concerns. Larger buildings are capable of absorbing the impacts of more antennas than smaller buildings. The Council considers the suggested changes, in line with the English system, should not apply to designated areas. The Council also notes that the revised English system, continues to have different requirements for different heights.**

Question 5

a) Do you agree with the proposed increase in height for antenna on buildings from four metres to six metres? **No**

b) If not, please indicate why. **The Council is not convinced that the increase in height of an antenna will result in reduced visual impact, particularly regarding the suggestion that it will allow antenna to be sited further back from the edge of a building. This is because setting back equipment from the edge of a building does not necessarily provide better network coverage, as it restricts the area that has line of sight. The Council concludes that, in practice, this is unlikely to happen. The suggested change is likely to achieve the opposite result and is not supported.**

Question 6

a) Do you agree that the definition of small antenna be amended to remove the restriction that it only applies to point to fixed multi-point systems? **Yes**

b) Should the restrictions on size be retained or modified? **It should only be modified to allow a modest mounting to be included i.e. 50% increase**

c) Should the maximum size include the mounting? **Yes**

d) Should the restrictions regarding the number of small antenna on a dwellinghouse be amended? **The Council considers that 4 antennas on a dwelling house is excessive and exceeds the revised English system.**

e) Should the restrictions on facing roads be removed for dwellinghouses in designated areas? **The Council considers category A listed buildings should be excluded.**

Question 7

a) Do you agree that PDR should extend to necessary ancillary equipment? **Yes**

b) Do you agree with the list of items that could be included in the definition? **The Council considers it impractical and unrealistic to try and define all ancillary equipment.**

c) Should any other equipment be added/ removed from the list? **The Council suggests defining ancillary equipment as: “any equipment necessary for the purposes of electronic communication”.**

Question 8

a) Do you agree that the time period for emergency apparatus to be located on a site should be increased to twelve months? **The consultation paper does not contain any evidence to demonstrate that six months is an inadequate period for allowing emergency repairs to be carried out. The Council is not convinced that it is necessary for emergency apparatus to be in place for 12 months to allow a problem to be resolved.**

b) If not, should we retain the current provisions or consider a different period? **The Council considers the existing provisions more than sufficient.**

c) Should planning authorities have discretion to agree a longer period where required? **The Council agrees that there may be some circumstances where an extension is required, and that discretion to agree a longer period would be useful.**

Question 9

a) Do you agree with the proposed changes to Class 68? **The Council has concerns about the proposed changes. The Council considers it would very difficult to implement an “aggregate” approach. There is a risk of creating an unintended loophole, which results in proposals for very large dishes being installed under PDR taking up the full aggregate allowance.**

b) Should there be a restriction on the size of each antenna as well as a maximum aggregate size? **Yes for the reasons set out above.**

BRIA Can you identify likely costs and benefits associated with the potential changes discussed in this paper which should be covered in the BRIA? **No comment**

EqIA Please provide details of any specific issues for any of the equality groups (including race, disability, age, sexual orientation, gender or religion and belief) which you think may arise in relation to the potential changes discussed in this paper. **No Comment**

SEA Please provide details of any significant environmental effects (positive or negative) which you think may arise in relation to the potential changes discussed in this paper. **No additional comments**