

## **EXPLANATORY MEMORANDUM TO**

### **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) (AMENDMENT) ORDER 2022**

**2022 No. 278**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been jointly prepared by the Department for Levelling Up, Housing and Communities and the Department for Digital, Culture, Media and Sport 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) Order 2022 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the General Permitted Development Order”). The instrument amends the limitations, restrictions and conditions which apply when Code Operators install, replace or alter electronic communications infrastructure through permitted development rights. These amendments specifically relate to mobile network development.

#### **3. Matters of special interest to Parliament**

- 3.1 None.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England.

#### **5. European Convention on Human Rights**

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

#### **6. Legislative Context**

- 6.1 Under Part 3 of the Town and Country Planning Act 1990 (“the 1990 Act”) planning permission is required for the development of land. Planning permission may be granted on application to a local planning authority or by a development order made under the 1990 Act.
- 6.2 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 key planning matters before development can proceed. This is known as “prior approval”.

- 6.3 Class A of Part 16 of Schedule 2 (Communications) of the General Permitted Development Order sets out the permitted development rights which can be used to install, alter and replace electronic telecommunications infrastructure. These rights may be used by “Code Operators” who are providers of electronic communications networks and providers of infrastructure systems. The operator must normally have been granted operator status by Ofcom under section 106 of the Communications Act 2003.
- 6.4 Along with permitted development rights, the deployment of electronic communications equipment is also governed by the Electronic Communications Code (“the Code”). The Code is set out in Schedule 3A of the Communications Act 2003 and is designed to facilitate the installation, maintenance and upgrade of electronic communications, through a statutory framework of duties, obligations and protections that apply to the deployment of digital communications networks by Code Operators.

## 7. Policy background

### *What is being done and why?*

- 7.1 Permitted development rights have an important role to play in the planning system. They provide a more streamlined planning process with greater planning certainty, while at the same time allowing the local consideration of key planning matters through a light-touch prior approval process.
- 7.2 At present, most electronic communications infrastructure can be installed and maintained as permitted development. Limits are set out in legislation on the scale of the development that can be deployed in this way. The circumstances in which prior approval are required are also set out in the General Permitted Development Order. These circumstances generally relate to the scale, location and appearance of development. In more sensitive locations – Conservation Areas, Areas of Outstanding Natural Beauty, the Broads, National Parks, areas specified by the Secretary of State for the purposes of section 41 (3) of the Wildlife and Countryside Act 1981, and World Heritage Sites (collectively defined as Article 2(3) land as set out in Part 1 of Schedule 1 of the General Permitted Development Order) – permitted development rights are generally more limited in scale and subject to greater controls.
- 7.3 It is essential that the planning system continues to effectively support the deployment of new mobile network infrastructure. The changes will provide Code Operators with flexibility to upgrade existing sites in England for 5G delivery, enhance coverage and meet growing demands for network capacity. They will also reduce the time, cost and uncertainty involved in upgrading mobile network infrastructure and encourage the use of existing infrastructure and promote site sharing to reduce the impacts of new deployment.
- 7.4 This Order amends Class A of Part 16 of Schedule 2 (Communications) of the General Permitted Development Order as set out below. The amendments implement the proposals set out in the Government Response to ‘*Changes to permitted development rights for electronic communications infrastructure: technical consultation*’ (see Section 10). The changes apply to permitted development rights for the deployment of radio equipment housing; strengthening existing ground-based masts; building-based masts; and new ground-based masts, followed by changes in respect to the safeguarding procedure and the definition for “small cell systems”.

### ***Radio equipment housing***

- 7.5 Radio equipment housing is required to support the deployment of antennae on new or existing masts. Article 3(5) and Article 4(4)(c) of this Order permit single developments of radio equipment housing up to 2.5 cubic metres on Article 2(3) protected land without prior approval. As a result of the change, where the single development of radio equipment housing is greater than 2.5 cubic metres, prior approval from the local planning authority is required. This change brings the right in line with the single development of radio equipment housing on unprotected land.
- 7.6 Article 6(e) of this Order sets out how “single development” in relation to radio equipment housing should be interpreted, clarifying that rights that permit a “single development” relate to the development of each individual unit of radio equipment housing.
- 7.7 Article 3(6), 4(4)(c) and 6(d) of this Order permit the deployment of radio equipment housing (of any size) to be deployed within a permitted compound without prior approval on all land, except for sites of special scientific interest. Permitted compounds should be less than 100 square metres in area with a closed perimeter.
- 7.8 It will enable Code Operators to more easily deploy the radio equipment housing needed to install additional antenna on existing masts, as well as the equipment housing required alongside new masts.

### ***Strengthening existing ground-based masts***

- 7.9 Permitting existing ground-based masts to be strengthened so that they can accommodate new or additional antennae will reduce the need for new masts and sites. Strengthening existing ground-based masts will entail changes to width and height whether by alteration to, or replacement of, the existing mast.

### ***Permitting width increases***

- 7.10 Article 3(2)(b), Article 4(3)(a)(iii) and Article 4(4)(c) of this Order amend the width permitted for alteration or replacement of an existing ground-based mast. The new limits apply on protected and unprotected land (except land on or within sites of special scientific interest) without the need for prior approval.
- 7.11 The changes permit:
- Alteration or replacement of existing narrow masts: Where the original width of the existing mast is less than one metre, a width increase of up to two-thirds is permitted without prior approval; and
  - Alteration or replacement of other masts: Where the original width of the existing mast is one metre or greater in width, a width increase of up to one-half or two metres (whichever is greater) is permitted without prior approval.

In both cases greater increases are subject to prior approval from the local planning authority.

- 7.12 Articles 6(c) and Article 6(g) of this Order clarify how width increases to existing masts should be calculated. These changes will clarify that calculations of width increases compare the width of the new and replacement mast at their widest point (excluding any antenna and including any antenna support structures).

### Permitting height increases

- 7.13 Article 3(2)(b), Article 4(3)(a)(ii) and Article 4(3)(b) amend the height permitted for alteration or replacement of existing ground-based masts. The changes permit increases (except on or within sites of special scientific interest) as follows:
- on Article 2(3) land or land on a highway: alteration or replacement up to a new height of between 20-25 metres, subject to prior approval of the local planning authority. Class A of Part 16 of Schedule 2 of the General Permitted Development Order already permits increases up to 20 metres, or up to the height of the existing mast (if taller) without prior approval on Article 2(3) land;
  - on all other land, alteration or replacement up to a new height of 25 metres (or up to the height of the original mast, if taller) would be permitted without prior approval. Any increases beyond this, up to a new height of 30 metres, would be subject to prior approval of the local planning authority.

### ***Building-based masts***

- 7.14 Permitting building-based masts will encourage Code Operators to use existing buildings to deploy masts, rather than deploying new ground-based masts. Article 4(3)(b)(i) of this Order permits the deployment of building-based masts on unprotected land without the need for prior approval from the local planning authority, provided that the tallest part of the mast does not exceed the tallest part of the building by more than 6 metres.
- 7.15 Current permitted development rights do not permit masts to be located on buildings less than 15 metres in height where the mast would be located within 20 metres of the highway. Articles 3(3) and 3(4) of this Order permit masts to be deployed on buildings which are less than 15 metres in height regardless of proximity to the highway on unprotected land. New masts would be subject to prior approval unless the tallest part of the mast does not exceed the tallest part of the building by more than 6 metres.

### ***New ground-based masts***

- 7.16 Article 3(2)(a) of this Order alters the height limits for the deployment of new ground-based masts through permitted development rights. These changes permit the installation of new ground-based masts of up to 30 metres in height on unprotected land, and up to 25 metres on Article 2(3) land. In both cases Code Operators would need prior approval from the local planning authority. These changes will reduce the number of new ground-based masts needed and will particularly support deployment of the Shared Rural Network, a programme to increase mobile network coverage throughout the UK.

### ***Amendments to the safeguarded procedure***

- 7.17 Article 4(5) of this Order amends the safeguarding procedure for the installation, alteration or replacement of a mast in to the proximity of civil and defence assets (aerodromes, technical sites and military explosives storage areas). The change means that Code Operators may carry out the development subject that the Code Operator notifies the Civil Aviation Authority or the Secretary of State for Defence, as appropriate, and that the development does not begin until 28 days after the notification is given.

### *Amendments to the definition of “small cell system”*

- 7.18 Article 6(f) of this Order amends the definition of “small cell system”. This amendment updates the existing definition to include the maximum power that a “small cell system” may operate (up to 10 watts in power), as well as its physical attributes. The change will make it clear that small cell systems are low-power wireless network access equipment operating within a small range, regardless of whether the underlying network type is a mobile or fixed line network.

### *Further provisions to mitigate potential impact of development*

- 7.19 Articles 4(2)(a) and 4(2)(b) of this Order strengthen the conditions on the siting and visual impacts of development that Code Operators must consider when deploying electronic communications apparatus, especially where the development is located on or adjacent to Article 2(3) land and other designated heritage assets. These provisions apply to the installation, alteration or replacement of masts and radio equipment housing. This change is intended to ensure that potential visual impacts from the development are mitigated, especially in more sensitive locations.
- 7.20 Article 4(2)(b) of this Order introduces a condition that Code Operators should minimise the impact that electronic communications apparatus being deployed, has on the accessibility of any footway and any premises. This is to ensure that any potential impacts on the accessibility of footways are reduced, including any impact affecting disabled people.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 The General Permitted Development Order was consolidated in 2015. This is the twenty-sixth amending instrument to the General Permitted Development Order. There are no current plans for a consolidation.

## **10. Consultation outcome**

- 10.1 The changes being made to Part 16 of Schedule 2 of the General Permitted Development Order 2015 (as amended) has been subject to extensive consultation. Both Departments engaged closely with representatives from industry, local planning authorities, National Parks and Areas of Outstanding Natural Beauty. The proposals were also subject to two public consultations.
- 10.2 Firstly, the principle of the reforms was consulted upon on 27 August 2019 for ten weeks, closing 04 November 2019. A total of 1,896 responses were received during this consultation from a number of stakeholders including (but not limited to) industry representatives, local authorities, community groups, arms-length bodies and members of the public. The consultation and government response are available to view at <https://www.gov.uk/government/consultations/proposed-reforms-to-permitted-development-rights-to-support-the-deployment-of-5g-and-extend-mobile-coverage>.
- 10.3 A further technical consultation was held for eight weeks, beginning 20 April 2021 and closing 14 June 2021. A total of 3,243 responses were received during this

consultation from a number of stakeholders including (but not limited to) industry representatives, local authorities, community groups, arms-length bodies and members of the public. The technical consultation and government response are available to view at <https://www.gov.uk/government/consultations/changes-to-permitted-development-rights-for-electronic-communications-infrastructure-technical-consultation>.

- 10.4 Consultation responses received across both consultations showed greatest support where the changes would encourage site sharing and use of existing structures, and recognise that reforms would benefit 5G deployment and extended coverage. Key issues raised by respondents included visual impacts on protected landscapes, lack of local consideration and scrutiny, impacts of 5G technology on wildlife and public health, as well as general opposition to 5G deployment. The government has responded to the issues raised in its responses to both consultations which are published on GOV.UK. The Articles in this Order address matters raised including mitigating visual and accessibility impacts from development (see Section 7).

## **11. Guidance**

- 11.1 To ensure that the delivery of high-quality communications infrastructure is balanced with local and environmental considerations, the Department for Digital, Culture, Media and Sport has developed new guidance to support the deployment of electronic communications infrastructure. The new guidance outlines the process that Code Operators should undertake when engaging with local planning authorities, communities and other interested parties. The Code of Practice for Wireless Network Development in England was published on 06 March 2022 by the Department for Digital, Culture, Media and Sport, and is available to view at <https://www.gov.uk/government/publications/code-of-practice-for-wireless-network-development-in-england>.

## **12. Impact**

- 12.1 There will be small savings to business, charities or voluntary bodies as measures will streamline the process to enable the deployment of certain types of electronic communications infrastructure by moving development into the permitted development regime (with or without prior approval) and no longer requiring full planning permission. Full planning applications and prior approval applications are estimated to decrease for between 7,600 and 8,300 sites, with industry estimates of savings between £2,000 and £2,500 per site from reduced time and fees. This results in an estimated annual direct benefit to business of between £1.4m and £2m over the 10-year appraisal period.
- 12.2 The impact on the public sector is that the number of full planning applications will fall whilst prior notification applications will increase. There will be some reduced work for local authorities matched by reduced income from fees. Fees are set at a level for local authorities to recover the reasonable costs involved.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the estimated annual net direct benefit to business is small as set out in paragraph 12.1.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.

- 13.2 The majority of the changes benefit businesses and are deregulatory in nature, enabling Code Operators (set out in paragraph 6.3) to undertake the development of electronic communications infrastructure without needing to apply for planning permission through the full planning process. Small businesses have not been exempted from the scope of these amendments as they will benefit from them.

#### **14. Monitoring & review**

- 14.1 The impact of the changes are small, as set out in Section 13, and the Government has announced that it will be considering wide-ranging reforms of the planning system. The Department for Levelling Up, Housing and Communities will continue to monitor permitted development rights with changes made accordingly to ensure intended outcomes are achieved. A statutory review clause has not therefore been included for this particular instrument.

#### **15. Contact**

- 15.1 Simon Taylor at the Department for Levelling Up, Housing and Communities, Telephone: 0303 444 3563 or email: [simon.taylor@levellingup.gov.uk](mailto:simon.taylor@levellingup.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Jenny Preece, Deputy Director for Planning – Infrastructure, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Stuart Andrew, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.