

Case 201602588

Sharp V (Virginia)

From: Sharp V (Virginia)
Sent: 03 November 2016 16:48
To: 'PlanningandCommunications2016@gov.scot'
Subject: Consultation on the Relaxation of Planning Controls for Digital Communications Infrastructure
Attachments:

Scottish Government

Consultation on the Relaxation of Planning Controls for Digital Communications Infrastructure

Thank you for giving Historic Environment Scotland the opportunity to comment on this consultation. Please find attached a completed copy of the response form (Annex E of the consultation document).

Please do not hesitate to contact me if you have any queries regarding our response, or if you wish to discuss any of the issues raised with us in further detail.

Kind regards

Virginia Sharp | Senior Casework Officer | Heritage Directorate



HISTORIC
ENVIRONMENT
SCOTLAND

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Annex E



Scottish Government
Riaghaltas na h-Alba
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**CONSULTATION - RELAXATION OF
PLANNING CONTROLS FOR DIGITAL COMMUNICATIONS
INFRASTRUCTURE**

RESPONDENT INFORMATION FORM & LIST OF QUESTIONS

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

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?

Yes No

LIST OF QUESTIONS

(Comment boxes are not intended to limit the amount of text)

Q1. Do you agree Class 67 PD rights should continue to apply only to Electronic Communications Code Operators?

Yes No

Please give reasons for your answer.

We are content with the current arrangement, but for our interests consider that extension of PD rights beyond Code Operators would be acceptable provided that all developers were subject to the same requirements to follow the guidance provided in the relevant planning policy and guidance, and were subject to the same prior approval requirements as Code Operators.

Q2. Do you agree with the proposed update to the general conditions for Class 67 PD rights?

Yes No

Please give reasons for your answer.

We are content that the proposed updates are not likely to have adverse effects on the historic environment.

Q3.(a) In view of the controls in place outwith the planning system, should Category A listed buildings and scheduled monuments be removed from the general area based restrictions on Class 67 PD rights?

Yes No

Q3.(b) Are there any other Class 67 designated areas which can be removed from the general area based restrictions?

Please give reasons for your answer.

Current and proposed PD developments have the potential for negative impacts on heritage assets, including A listed buildings and scheduled monuments and their respective settings. Physical works to these heritage designations are controlled through the listed building consent (LBC) and scheduled monument consent (SMC) mechanisms.

However, the LBC and SMC regimes do not apply to developments affecting the setting of these heritage assets. Consequently, removing A listed buildings and scheduled monuments and their settings from the general area based restrictions would significantly diminish or remove (in the absence of a prior approval requirement) the ability of planning authorities to protect the setting of nationally important heritage assets.

Whilst requirement for prior approval would give the planning authority some scope to consider those impacts, consult on them and, if necessary, refuse approval, it would not provide scope for exploration of opportunities to mitigate adverse impacts through siting or design, either through amended proposals or conditions of consent. Additionally, prior approval would not allow statutory consultees such as HES to object, consequently also removing the trigger to notify the proposal to Scottish Ministers in cases where the planning authority are minded to grant consent.

If it were possible to remove Category A listed buildings and scheduled monuments whilst retaining their respective settings within the Class 67 designated areas, we would be content that this would retain appropriate control over impacts on setting.

We do not support the removal of any other heritage designations (Conservation Areas, Historic Gardens and Designed Landscapes, Historic Battlefields) from the general area based restrictions. These designations are not subject to consent regimes other than planning permission. Removal of these from the general area based restrictions would therefore significantly diminish or remove (in the absence of a prior approval requirement) the ability of planning authorities to protect these heritage assets in relation to the impacts of developments carried out under Class 67 PD rights.

Q4. Do you have any other comments on the Class 67 designated areas in light of the proposals set out in this paper?

No

Q5. Do you agree with proposals to extend the time period for emergency works from 12 to 18 months?

Yes No

Please give reasons for your answer

We are content that the proposals are not likely to have adverse effects on the historic environment.

Q6. Do you agree with the proposed extension of Class 67 PD rights for small antenna on buildings, including dwellinghouses?

Yes No

Please give reasons for your answer.

We do not consider that this proposal would be likely to result in significant adverse impacts for Conservation Areas, Historic Battlefields or Historic Gardens and Designed Landscape. Whilst there is greater potential for adverse impacts on listed buildings or scheduled monuments, this would be subject to control through LBC and SMC.

Q7. Do you agree with the proposed increase in height allowed for altered or replaced ground based masts under Class 67 PD rights?

Yes No

Please give reasons for your answer.

We are broadly content that this proposal would not be likely to have a significant effect on the majority of historic environment assets, as the principle of development has already been established and the proposed limitations on height increases will reduce the likelihood of significant additional impacts. In the most sensitive areas (most likely the settings of A listed buildings and scheduled monuments), there is greater potential for cumulative impacts to result in a significant adverse effect, but we do not consider that, in practice, this scenario would be likely to happen with sufficient frequency to recommend against this proposal.

Q8. Do you agree with the proposed increase in the maximum distance allowed between the original and replacement ground based masts under Class 67 PD rights?

Yes No

Please give reasons for your answer.

Extension of PD for repositioning of masts would have an increased likelihood of potential adverse setting impacts on heritage assets (most likely listed buildings and scheduled monuments), and also an increased likelihood of direct impacts on undesignated archaeology. We consider that these could be mitigated through application of a prior approval requirement to this aspect of the proposed PD extension. However, if it is considered that application of prior approval in the context of this proposal is not workable or desirable, we recommend that the proposal is not pursued.

Q9.(a) Should the current width restriction of one third the original or one metre (whichever is the larger) for alterations to ground based masts be increased?

Yes No

Q9(b) What should the new restriction be?

We are content with the proposal that current width restrictions should remain.

Q10. Do you agree with proposals to introduce PD rights for new ground based masts outside the Class 67 designated areas?

Yes No

a) do you agree the proposed height restriction of 25m?

Yes No

b) do you agree a prior approval should be required on siting and appearance?

Yes No

Please give reasons for your answers (including any alternative proposals).

New ground based masts have the potential for significant direct and indirect (setting) impacts on both designated and undesignated heritage assets. However, we consider that outside the current Class 67 designated areas, the application of a 25m height restriction and a requirement for prior approval on siting and appearance will provide sufficient safeguards against significant adverse effects.

In the event that, as proposed at Question 2, the setting of A listed buildings and scheduled monuments are removed from the Class 67 designated areas, we would not support this proposal (either with or without a prior approval requirement), for the reasons set out in our response to Question 11.

Q11.(a) Is there scope to introduce Class 67 PD rights for new ground based masts within any, or all, of the Class 67 designated areas?

Yes No

b) if yes, within which of the Class 67 designations should such PD rights apply? Please give reasons for your answer.

We do not consider that there is scope to introduce Class 67 PD rights for new ground based masts within those Class 67 designated areas which relate to the historic environment (conservation areas; category A listed buildings and their settings; scheduled monuments and their settings; historic gardens and designed landscapes; historic battlefields).

The likelihood of adverse direct and / or indirect (setting) impacts on heritage assets through PD rights for construction or installation of new masts in these areas would be high because of the nature of the designated areas and the development type. It is likely that in many such cases these impacts would be significant and affect nationally important heritage assets.

Whilst requirement for prior approval would give the planning authority some scope to consider those impacts, consult on them and, if necessary, refuse approval, it would not provide scope for exploration of opportunities to mitigate adverse impacts through siting or design, either through amended proposals or conditions of consent. Additionally, prior approval would not allow statutory consultees such as HES to object, consequently also removing the trigger to notify the proposal to Scottish Ministers in cases where the planning authority are minded to grant consent.

We consider that given the sensitivity of areas designated under Class 67 for the historic environment, introduction of PD rights supported by prior approval is likely to result in an increase in adverse impacts on the historic environment due to the lack of opportunity for the planning authority to secure mitigative measures as part of the approval process. In some cases, rather than expediting the process for developers, PD with prior approval may be slower, as many proposals which could have been consented with conditions through a planning application may instead be refused approval.

c) Should any conditions (e.g. prior approval) and/or restrictions (e.g. on height) apply?

Yes No

If so, what should these be?

n/a (see response to Q11 b)

Q12.(a) Do you agree with the proposed mechanism for prior approval of new ground based masts?

Yes No

b) In particular, do you agree with the proposed publicity requirements, including neighbour notification and on-line publication?

Yes No

c) Do you agree with the proposed list of statutory consultees for the purposes of Class 67 prior approval?

Yes No

Q13. Please explain your answers and any suggestions for alternative requirements. Do you have any further comments on the proposed prior approval process for new ground based masts?

On the basis that PD and prior approval would only apply to new ground based masts outside the existing Class 67 designated areas which relate to the historic environment, we are content with the proposed mechanism, publicity requirements and list of statutory consultees. This is on the understanding that planning authorities would assess prior approval applications against national and local planning policies, and that where the detailed siting and/ or design of development proposals were found to be contrary to policy, this would result in refusal of prior approval.

Q14. Do you agree with the proposed fee of £150 for prior approval for new ground based masts?

Yes No

Please give reasons for your answer.

We have no view on this proposal.

Q15.(a) What should the Class 67 PD rights be for ground based equipment housing (and development ancillary to such equipment housing) within the various Class 67 designated areas?

We consider that there may be scope for Class 67 PD rights for ground based equipment housing (and ancillary development) within conservation areas, historic gardens and designed landscapes and historic battlefields, subject to a requirement for prior approval. The nature of these designated areas would allow them to accommodate *modest* development of this type without a high likelihood of significant adverse effect. However, proliferation of similar developments in the same location could result in cumulatively significant adverse impacts. Consequently, we would recommend that PD rights for this type of development should be subject to restrictions on size and cumulative development, and should require prior approval.

Q15(b) Please explain your answer, including any proposed conditions and restrictions on such PD rights.

See above (Q15a)

Q16. Do you agree with the proposed increase in Class 67 PD rights to allow up to five antenna systems on a building outside Class 67 designated areas?

Yes No

Please give reasons for your answer.

On the basis that current PD rights allow up to four antenna systems, we are content that the proposal is not likely to result in significant additional adverse impacts for heritage assets outside Class 67 designated areas.

Q17.(a) What additional PD rights should apply to apparatus on buildings in Class 67 designated areas? Please explain your answer – including any different restrictions and conditions that might apply in different Class 67 designated areas.

Whilst we are content with the current arrangement, we consider that there may be limited scope to extend PD rights for apparatus on buildings in historic gardens and designed landscapes, historic battlefields and conservation areas. Given that the proposal applies to installations on existing buildings, and the apparatus will appear in the context of an existing structure, significant adverse effects on these designated areas are less likely. In order to reduce and mitigate those instances where effects may be

more significant, we recommend that there should be a size restriction and that these PD rights should be subject to a requirement for prior approval.

However, there would be a greater potential for significant setting impacts on A listed buildings and scheduled monuments and their settings. For this reason, we would not support extension of PD rights for this type of development in those designated areas.

Q18(a) Are any changes required to current PD rights for apparatus on buildings and structures to further support deployment of 'small cell' technology in future? (Paragraph 20 of the consultation refers).

Yes No

Q18(b) If yes, what particular PD rights are needed? Please give reasons for your answer.

We have no view on this issue.

Q.19(a) Is there scope to extend PDR for supporting equipment (ground based masts)?

Yes No

Q.19(b) If yes, please describe the type of development involved and the circumstances in which additional PD rights should apply (for example, should these apply within the Class 67 designated areas)?

On the basis that this applies to supporting equipment for existing ground based masts, we consider that there is limited scope for additional PD rights to apply in both non-designated and designated areas; as the apparatus will appear in the context of an existing structure, significant adverse effects on heritage assets are less likely. In order to reduce and mitigate those instances where effects may be more significant (including direct impacts on undesignated archaeology) we recommend that there should be a size restriction and that these PD rights should be subject to a requirement for prior approval.

Q.20 Do you have any further comments on the proposed miscellaneous changes to Class 67?

We have no further comments to add.

Q.21 Do you have any further comments on any other aspects of the proposed Class 67 PD rights?

We have no further comments to add.

Q22. Do you have any comments or information relevant to the Strategic Environmental Assessment (SEA) aspects of this issue? If so, please elaborate.

We welcome your commitment to keep consideration of the potential environmental effects of the Amendment Order under review. In relation to this, you may find it helpful to note that our consultation response suggests that several of the alternatives being explored are likely to have negative effects for the historic environment.

Q23. Do you agree with the conclusions of the partial Business and Regulatory Impact Assessment (BRIA), in particular regarding the anticipated benefits of the proposed changes? Do you have any further comments or information to support the final BRIA?

We have no view on this issue.

Q.24 In relation to the partial Equality Impact Assessment, please tell us about any potential impacts, either positive or negative, you feel the proposals in this consultation document may have on any particular groups of people.

We have no view on this issue.

Q.25 In relation to the partial Equality Impact Assessment, please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups.

We have no view on this issue.