

Number: WG41306



Welsh Government
Consultation – summary of response

Subordinate Legislation Consolidation and Review -
Town and Country Planning (General Permitted Development) Order
1995 - **Part 24 Development by Electronic Communications Code
Operators (Wales)**

December 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg
This document is also available in Welsh

OGL © Crown Copyright Digital ISBN: 978-1-80082-509-3

Table of Contents

1. Introduction

2. Responses

3. Summary of responses

1. Introduction

- 1.1 In 2018 the Welsh Government undertook the consultation: *Subordinate Legislation Consolidation and Review*, which sought views in relation to changes to the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 1995. The consultation took place between 31 May 2018 and 28 September 2018.
- 1.2 In respect of the General Permitted Development Order we consulted on changes to Part 24, Development by Electronic Communications Code Operators (Wales). Part 24 concerns permitted development rights for telecommunications development. The proposed changes were aimed at improving telecommunications coverage and digital connectivity throughout Wales and helping address the requirements of 5G services and other future technological innovations.
- 1.3 We asked eight questions about Part 24 (Q34 to Q41) and received responses from 41 consultees. Due to limited resources we were only able to consider responses to three questions (Q34, Q35 and Q41) in the consultation. These questions concerned proposed increases in the height of ground based masts in protected and unprotected areas, increases in the allowable width of a replacement ground based mast, and an increase in the length of time within which moveable electronic communications apparatus could operate without seeking planning permission in an emergency situation.
- 1.4 The [Consultation Report Summary](#) covering the initial phase of the proposed Part 24 amendments was published in February 2019. The [Town and Country Planning \(General Permitted Development\) \(Amendment\) \(Wales\) Order 2019](#), which incorporated changes for Q34, Q35 and Q41, came in to force 1 April 2019.
- 1.5 This new consultation report addresses the 2018 responses to the remaining five telecommunications questions, namely Q36 to Q40. Questions 36 to 40 are listed in Table 1 and specifically relate to issues concerning small antenna (which it was proposed to merge with the existing definition of small cell antenna). A detailed explanation of the questions can be viewed in the [2018 consultation document](#). For each question a statistical breakdown of the number of respondents by category is presented followed by a summary of the main points expressed, and then followed by the Welsh Government's response.

Table 1 : Consultation Questions	
Q36	Do you agree with the definition of 'small antenna' and 'small cell system'?
Q37	Do you agree with the proposed changes to small antennas and small cell systems allowed on buildings and structures (other than dwellinghouses and within their curtilages) in unprotected areas, and protected areas?

Q38	Do you agree with the changes to permitted development rights for small antenna and small cell systems on dwelling houses and within their curtilages in unprotected areas; and dwelling houses in protected areas and conservation areas?
Q39	Do you agree these changes are sufficient to accommodate the likely needs of future network requirements?
Q40	Do you agree with the changes to other antenna system and to the increase in numbers of electronic Communications code operators present on a building?

1.6 Section 2, Responses, provides an overall statistical summary of the consultation.

1.7 Section 3, Summary of Responses and Welsh Government Analysis, provides a statistical overview of the responses to each question followed by a summary of the main points expressed. A Welsh Government analysis of respondents comments and response is then presented.

1.8 The statistical overview shows respondents who agreed, disagreed, and neither agreed nor disagreed with the questions proposal. Where respondents did not specify a particular answer they were recorded as 'did not specify'.

2. Responses

2.1 Table 2 shows the number and percentage of responses to telecommunications Q36 to Q40, broken down by type of response.

Table 2	Response							
	Agree	%	Disagree	%	Neither agree/nor disagree	%	Did not specify	%
Q36	27	87	0	0	1	3	3	10
Q37	22	73	3	10	2	7	3	10
Q38	20	65	7	23	2	6	2	6
Q39	18	75	3	13	3	13	0	0
Q40	25	96	1	4	0	0	0	0

2.2 Most noticeably in Table 2 is the positive support for all 5 questions, particularly questions 36 and 40 which received 87% and 96% agreement respectively. Q37

and Q39 received over 70% agreement each. Q38, regarding the number of small antenna on dwellings received the most comments disagreeing with the proposal, although the majority (65%) were still in favour.

2.3 Many respondents who agreed with the questions did however go on to clarify their position, including caveating their answers to include information to strengthen the proposal, and conditional criteria to make it acceptable.

2.4 Table 3 shows responses to telecommunications questions broken down by respondent type; 41 responses were received. The largest proportion of respondents were Local Authorities making up 37% of those responding, followed by 'Others' which include Town and Community Councils, and individuals. Professional Bodies and Interest Groups made up the next largest category, these included detailed responses from mobile and digital service sector organisations.

Table 3 Breakdown of Respondents		
Category	Number	% of Total
Local Authorities (including National Park Authorities)	15	37
Government Agency/Other Public Sector	5	12
Business / Planning Consultants	3	7
Professional Bodies/Interest Groups	8	20
Voluntary Sector	1	2
Others	9	22
Total	41	100

3. Summary of Responses and Welsh Government Analysis

3.1 This section provides a summary of responses for each question and discusses in more detail respondents main points. The Welsh Government then addresses these points.

Q36	Do you agree with the definition of 'small antenna' and 'small cell system'?
------------	---

Statistical Summary						
		Agree	Disagree	Neither Agree nor Disagree	Did not Specify	Total
A	Local Authorities (including National Park Authorities)	15	0	0	0	15

B	Government Agency/Other Public Sector	1	0	1	0	2
C	Business / Planning Consultants	2	0	0	1	3
D	Professional Bodies/Interest Groups	4	0	0	1	5
E	Voluntary Sector	0	0	0	0	0
F	Others	5				5
Total		27	0	1	2	30

3.2 Question 36 proposed that the definition of 'small antenna' is clarified and uses similar wording to what is presently used to describe a 'small cell antenna'. In practical terms this means that small antenna would now be defined as an antenna:

- Operating on a point to multi point or area basis
- Variously referred to as a femtocell, picocell, metrocell and microcell
- Does not exceed 5000 square centimetres surface area in any 2 dimensional measurement
- Does not exceed 50,000 cubic centimetres in volume

3.3 There was overwhelming support for amendments to the definition of small antenna amongst those responding to telecommunication questions. Twenty seven out of 30 responses were in agreement, including the 15 Local Authorities.

Welsh Government Response

3.4 The purpose of this proposal is to simplify the existing system which currently includes separate definitions for small antenna and small cell antenna. These two terms are confusing. The proposal seeks to remove the existing small antenna definition and replace it with the current small cell antenna definition. It is envisaged that this will make the GDPO clearer in its application for planning authorities and developers. This will support the consultation's other proposals to allow the installation of greater numbers of small antenna to assist the growth in new 4G and 5G and other related connectivity technologies to benefit the future needs of individuals, communities and business.

3.5 Upon further consideration it has not been thought necessary to keep the two separate definitions as they were largely repetitive. The Welsh Government therefore considers that the term "small cell system" more accurately reflects the equipment that this definition is intended to cover (which is wider than an antenna and covers ancillary equipment). It also ensures that we are consistent with terms used in the other Devolved Administrations, particularly Scotland who are

currently consulting on a similar change. This will have no effect on the actual wording of the definition, but should make it more easily understood by those using the GDPO.

Q37 Do you agree with the proposed changes to small antennas and small cell systems allowed on buildings and structures (other than dwellinghouses and within their curtilages) in unprotected areas, and protected areas?

Statistical Summary						
		Agree	Disagree	Neither Agree nor Disagree	Did not Specify	Total
A	Local Authorities (including National Park Authorities)	8	3	1	1	13
B	Government Agency/Other Public Sector	1	0	1	1	3
C	Business / Planning Consultants	3	0	0	0	3
D	Professional Bodies/Interest Groups	5	0	0	0	5
E	Voluntary Sector	0	0	0	0	0
F	Others	5	0	0	0	5
Total		22	3	2	2	29

Summary of Responses

3.6 Question 37 proposes that within protected and unprotected areas there should be no restrictions on the number of small antenna (as described in the new definition in Q36) on buildings and structures (other than dwelling houses and within dwelling house curtilages, and in relation to Conservation Areas).

3.7 Whilst 76% of respondents agreed with Q37, including 8 out of 11 Local Authorities, a number of concerns were expressed, and some of those agreeing caveated their comments.

3.8 Ynys Y Mon County Council and Caerphilly County Borough Council both cited concerns about visual impact, whilst Flintshire County Council felt that

unrestricted small antenna on buildings under 15m was excessive. Rhondda Cynon Taff do not support this proposal in protected sites.

- 3.9 Flintshire and Ynys Y Mon consider prior approval necessary, with Flintshire suggesting that after installation of one system prior approval is required for the siting and appearance of further systems. Campaign for Rural Wales, whilst supporting the proposal, considered prior approval was required in protected areas and Conservation Areas.
- 3.10 Contrary to the support to retain prior approval expressed above, Mobile UK consider that protected areas (including all Article 1(5) land) should not require prior approval, they should be permitted development.
- 3.11 NRW supported the proposal subject to existing restrictions on the location of small antenna and small cell systems within Article 1(5) land. Increased visual impact could be detrimental to the purpose of conserving and enhancing natural beauty in designated landscapes.
- 3.12 Cadw highlighted that Listed Building consent and Scheduled Ancient Monument consent is required where any work is proposed, and therefore no permitted development rights apply to antenna. Cadw noted restrictions are also placed on antennas in conservation areas, and they suggest World Heritage Sites and their essential settings or buffer zones also be included.
- 3.13 Open Reach emphasised the requirement for additional small antennas and small cell systems to address the growing needs of 5G and other technological changes.

Welsh Government Response

3.14 Whilst there was wide support expressed for this proposal some concerns were nevertheless expressed, in particular regarding potential visual and amenity impacts. The Welsh Government recognises there is a balance to be struck between the need to provide improved telecommunications coverage and connectivity, and the need to ensure sensitive locations are protected.

3.15 The proposed relaxation in numbers of small antenna (new definition) on buildings and structures (other than dwellings which are considered under Q38) in both protected and unprotected areas is aimed at assisting the rollout of new telecommunications and digital connectivity technologies across Wales to benefit as many individuals, communities and businesses as possible. It is essential Wales is competitive in this respect and that some areas are not unfairly, or unduly, disadvantaged in terms of their connectivity and ability to access new digital services. This is particularly relevant in rural areas. It is noted that some consultation responses felt that an unlimited number of antennas on buildings was excessive, but the Welsh Government has sought to protect our most valued buildings and areas by retaining the need for prior approval in protected areas so that siting and design issues can be considered and that planning permission will always be needed on Listed Buildings and Ancient Monuments.

3.16 The consultation identified Conservation Areas as a particular additional area in need of special consideration within the subset of Protected Areas due to the potential impact high numbers of antennae on a building could have to the sensitive character of these areas, and proposed specific restrictions. Namely, no more than 2 small antenna to be located on a building or structure (other than a dwelling) in a Conservation Area.

3.17 Cadw indicated in their response that World Heritage Sites had not been addressed in our consultation proposals and should be considered for protection alongside Conservation Areas. Given the importance of World Heritage Site status nationally and globally it is agreed this should be recognised so that buildings or structures within such sites are afforded the same protection as Conservation Areas in respect to small antenna. Listed Buildings and Ancient Monuments have their own consent regime and remain unaffected by any proposals in this consultation.

3.18 The consultation proposes minor adjustments to restrictions applying to antenna other than small antenna (new definition) but in most instances existing restrictions continue to apply.

3.19 With regard to prior approval, this is required for Class A development (including antenna) in protected areas and antenna on a building where the antenna would exceed the height of the structure by 6m or more outside protected areas. The Welsh Government wishes Local Planning Authorities to retain the ability to assess the location and design of small antenna in protected areas. We do not intend to alter or relax this requirement in relation to the consultation proposals and amendment of Part 24 of the GPDO. Notwithstanding this, Part 24, A2(1) (Conditions), requires Class A(a) development such as antenna and supporting apparatus which are installed, altered or replaced on a building to be sited so as to minimise its effect on the external appearance of the building.

Q38	Do you agree with the changes to permitted development rights for small antenna and small cell systems on dwelling houses and within their curtilages in unprotected areas; and dwelling houses in protected areas and conservation areas?
------------	---

Statistical Summary						
		Agree	Disagree	Neither Agree nor Disagree	Did not Specify	Total
A	Local Authorities (including National Park Authorities)	5	6	1	0	12
B	Government Agency/Other Public Sector	1	0	1	2	4
C	Business / Planning Consultants	3	0	0	0	3

D	Professional Bodies/Interest Groups	5	1	0	0	6
E	Voluntary Sector	0	0	0	0	0
F	Others	6	0	0	0	6
		20	7	2	2	31

3.21 Question 38 proposes changes to the number of small antenna (as described in the definition presented in Q36) on dwelling houses and dwelling house curtilages in both protected and unprotected areas and in relation to Conservation Areas. Proposals included an increase in antenna from 1 small antenna (and no small cell antenna) to 4 in unprotected and protected areas (excluding Conservation Areas). In Conservation Areas an increase from 1 small antenna (and no small cell antenna) to 2 small antenna.

3.22 65% of respondents agreed with this proposal, whilst 23% disagreed. Of Local Authorities responding, 42% agreed whilst 50% disagreed; 8% (corresponding to 1 authority) neither agreed nor disagreed.

3.23 Local Authorities who disagreed were mainly concerned with the increase in number of antenna on dwellings and the potential visual and amenity impacts this might cause, particularly in protected areas, and used terms such as “excessive”, “over concentration” and “detrimental”. Flintshire considered the increase unacceptable. Caerphilly suggested further evidence of numbers of antenna and their impacts were required.

3.24 Campaign for National Parks also considered the increase too great with detrimental visual impact in some places, they felt there was strong grounds for maintaining existing restrictions.

3.25 Flintshire and Ynys Mon referenced the need for prior approval to assess siting and appearance in protected areas.

3.26 Clwydian Range and Dee Valley AONB indicated that no distinction was drawn between National Parks, AONB’s and World Heritage Sites as protected areas and everywhere else in respect of the proposals for small antennas. They felt proposals for Conservation Areas should also be applied to all Article 1(5) land and World Heritage Sites.

3.27 Whilst agreeing with the proposal NRW considered it be subject to existing restrictions on location of small antenna and small cell systems on Article 1(5) land due to potential visual impact detrimental to conserving and enhancing natural beauty in designated landscapes.

3.28 Cadw repeated their response to Q37 about Listed Buildings, Scheduled Ancient Monuments and how World Heritage Sites should also be included in any restrictions applied to protected areas.

3.29 Mobile UK agreed to changes to small antenna on dwelling houses. However, they felt existing restrictions regarding antenna on buildings within 20m of, and facing, a highway must be removed. They consider the visual amenity argument to be contradictory because there are no restrictions on antenna on flat roofs above the skyline which they view more visually more prominent than face mounted antenna. Face-mounted antenna within 20m of a highway is counterproductive where 5G may require many 'small antenna' in urban areas.

Welsh Government Response

3.30 The purpose of Q38 was to enable the widespread roll out of 4G, 5G and other related digital technologies across Wales (as set out in Welsh Government Response to Q37). Whilst Q38 was strongly supported overall, half of Local Planning Authorities responding disagreed and expressed concern that the proposal was excessive, allowing too many small antenna on a dwelling. The increase, from 1 to 4 antenna, would also use the small cell antenna definition which would allow a potentially larger unit to be installed.

3.31 The Welsh Government agrees that increasing small antenna on a dwelling from 1 to 4 (and small cell antenna from 0 to 4) may be excessive in certain circumstances, and in such cases could have effects on a dwellings visual amenity or an areas character which was not intended. For this reason it is proposed to only increase the number of small antenna on a dwelling in unprotected and protected areas to 2 (other than Conservation Areas). In Conservation Areas the consultation proposed up to 2 small antenna on a dwelling. However, under existing circumstances 1 small antenna (but no small cell antenna) is allowed on a dwelling in a protected area; it is now proposed to retain this allowance within Conservation Areas (and therefore additionally allow one small cell antenna). In all cases where small antenna on dwellings are concerned existing restrictions on location will continue to apply including the need for prior approval in protected areas. It is proposed to not permit development on Listed Buildings and Scheduled Ancient Monuments.

3.32 As explained in the Welsh Government Response to Q37, Cadw indicated that World Heritage Sites had not been addressed in our consultation proposals and should be considered for protection alongside Conservation Areas. Given the importance of World Heritage Site status nationally and globally it is agreed this should be recognised so that dwellings within such sites are afforded the same protection as Conservation Areas in respect to small antenna. Therefore no more than 1 small antenna to be located on a dwelling. Listed Buildings and Ancient Monuments have their own consent regime and remain unaffected by any proposals in this consultation.

3.33 Due to the merger in definitions of small cell antenna and small antenna, it is not considered appropriate to retain the restriction on small antenna being located 20 metres from a highway (as small cell antenna were previously exempt). This will therefore be removed.

Q39	Do you agree these changes are sufficient to accommodate the likely needs of future network requirements?
------------	--

Statistical Summary						
		Agree	Disagree	Neither Agree nor Disagree	Did not Specify	Total
A	Local Authorities (including National Park Authorities)	7	0	0	0	7
B	Government Agency/Other Public Sector	0	0	1	0	1
C	Business / Planning Consultants	2	1	0	0	3
D	Professional Bodies/Interest Groups	3	2	0	0	5
E	Voluntary Sector	0	0	1	0	1
F	Others	5	0	1	0	6
		17	3	3	0	23

3.34 74% of respondents agreed with Q39 and 13% disagreed. All of those disagreeing fell under the categories Business & Planning Consultants and Professional Bodies and Interest Groups.

3.35 Mobile UK considered that the proposed changes do not go far enough to facilitate future changes to mobile networks and services. In particular the need for prior approval is regarded a limiting factor which will hamper progress. The 'face or slope facing a highway' restriction described in Q38 will create the need for numerous applications that will slow the roll-out of 5G technology.

3.36 Mobile operators should benefit from the same rights afforded fixed operators, i.e. telegraph poles under permitted development for the use of small cell antennas and equipment cabinets adjacent. Fixed operators can install a telegraph pole under a notification; installation of the same structure but with an antenna (camouflaged if necessary) would also seem appropriate. This would allow greater numbers of installations in designated areas and rural communities where the availability of tall buildings and structures is sparse.

3.37 BT Open Reach agreed with Q39 but went on to say that there was a need for permitted development for small antennas, small cell systems and any other apparatus that facilitates the efficient rollout of a mobile telecommunications

network. Changes will enable the expansion of coverage and connectivity in rural areas and in more densely populated areas. Data consumption in the UK is growing so facilitating the growth of digital connectivity in the UK is welcomed.

3.38 CPRW disagreed and considered it sensible to assume Q39 did not provide sufficient change to accommodate future network requirements. Gwynedd considered the changes reasonable but further restrictions and controls were required for the reasons already identified for the reasons already have been identified.

Welsh Government Response

3.39 Mobile UK considered that the proposed changes set out in the consultation do not go far enough to facilitate future changes to mobile networks and services. The Welsh Government considers the consultation proposals, including those already implemented though Q34, Q35, and Q41, provide a suite of changes to assist the roll out of new telecommunications technologies. The Welsh Government must balance its objectives to improve connectivity to digital services with their potential impacts on the built environment. This is a question about introducing sufficient provision in the planning system to address industry requirements for the foreseeable future, and it is considered these proposed changes provide the necessary flexibility to do so.

Q40 Do you agree with the changes to other antenna system and to the increase in numbers of electronic Communications code operators present on a building?

Statistical Summary						
		Agree	Disagree	Neither Agree nor Disagree	Did not Specify	Total
A	Local Authorities (including National Park Authorities)	10	1	0	1	12
B	Government Agency/Other Public Sector	2	0	0	0	2
C	Business / Planning Consultants	3	0	0	0	3
D	Professional Bodies/Interest Groups	5	0	0	0	5
E	Voluntary Sector	0	0	0	0	0
F	Others	5	0	0	0	5
		25	1	0	1	27

--	--	--	--	--	--

- 3.40 Question 40 proposed 1 additional antenna system (other than a small antenna or dish antenna) allowed on a building or structure and the antenna would be located below a height of 15m above ground level. This will allow an increase in antenna on a building from three to four. Question 40 also proposed where an antenna (other than a dish antenna or small antenna) is located either below 15 metres or above 15 metres on a building or structure, the number of electronic communications code operators allowed will increase from 3 to 4.
- 3.41 Strong support was expressed for Q40 with 93% of respondents agreeing; only 4% (1 respondent) disagreed. Ten out of 12 Local Authorities supported the changes.
- 3.42 Mobile UK agreed to an increase in mobile operators present on a building. However, they refer to the 'Forsythia House' judgement in England which they consider will require amendments to legislation to accommodate the needs of mobile operators to rollout 5G technology across Wales. Mobile UK consider the interpretation arrived at in this case will create uncertainty. Legislation around rooftop antennas should be written and worded appropriately to avoid the Forsythia interpretation so it is clear that rooftop antennas and their supports/fixings are permitted development without prior approval and they are not 'masts' interpreted akin to a ground based mast.
- 3.43 Caerphilly considered that the impact of change on visual amenity, and the character of buildings, including dwellings, and Conservation Areas was the important issue. If analysis indicates a detrimental impact, then number of operators is a secondary consideration.
- 3.44 BT Open Reach agreed with the increase in numbers of electronic communications code operators present on a building, and considered it a reasonable and proportionate response to the likely growing need for additional apparatus with the deployment of the 5G telecommunications network.
- 3.45 NRW agreed subject to restrictions on the location of antenna within Article 1(5) land explaining that without this there is an increased risk of harmful visual and landscape impacts contrary to conserving and enhancing natural beauty of designated landscapes.

Welsh Government Response

3.46 Question 40 proposed an increase in electronic communications code operators from 3 to 4 and an increase in antenna (other than a dish antenna or small antenna) from 3 to 4 located below 15 metres on a building or on a mast on such a building. Similarly an increase in electronic communications code operators from 3 to 4 also applies where they relate to apparatus located above 15m on a building or on a mast on such a building.

3.47 These amendments are proposed as minor changes to provide additional flexibility to permitted development rights in Part 24.

3.48 The consultation did not include an assessment of Part 24 text concerning the Forsythia House Judgement mentioned by Mobile UK. It does not therefore form part of any of the outcomes of this process. However this issue may be looked at again in the future when detailed consideration can be given to this issue and the range of stakeholders consulted on proposals