



TOWN AND COUNTRY PLANNING (PERMITTED DEVELOPMENT) (TELECOMMUNICATIONS) ORDER 2013

Index

Article	Page
1 Title	3
2 Commencement	3
3 Interpretation.....	3
4 Planning approval for development with respect to telecommunications	5
5 Direction that generalised approval does not apply	5
6 Transitional Provisions	6
7 Revocation	6
SCHEDULE 1	7
DEVELOPMENT OUTSIDE CONSERVATION AREAS	7
SCHEDULE 2	15
DEVELOPMENT WITHIN CONSERVATION AREAS	15

Statutory Document No. 0433/13



Town and Country Planning Act 1999

TOWN AND COUNTRY PLANNING (PERMITTED DEVELOPMENT) (TELECOMMUNICATIONS) ORDER 2013

Approved by Tynwald: 22 January 2014
Coming into Operation: 1 February 2014

The Department of Infrastructure makes the following Order under sections 8(1), 2(a), (3), (4) and (5), 9(1) and 10(5) and (6) of the Town and Country Planning Act 1999.

1 Title

This Order is the Town and Country Planning (Permitted Development) (Telecommunications) Order 2013.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 February 2014¹.

3 Interpretation

In this Order —

“**1984 Act**” means the Telecommunications Act 1984;

“**Airport**” means the airport operated by the Department at Ronaldsway in the parish district of Malew;

“**ancient monument**” means —

- (a) a monument under the guardianship of the Manx Museum and National Trust under section 10 of the Manx Museum and National Trust Act 1959,
- (b) in respect of which a preservation order under section 11 of that Act is in force,
- (c) or included in a list of monuments published under section 13 of that Act;

¹ Tynwald approval is required by section 44(1) of the Town and Country Planning Act 1999

- “**antenna system**” means a set of antennas installed on a building or structure and operated by a single telecommunications code system operator in accordance with his licence;
- “**building**” does not include plant or machinery or any gate, fence, wall or other means of enclosure;
- “**Department**” means the Department of Infrastructure and except where the context otherwise requires refers specifically to its Planning and Building Control Division;
- “**development ancillary to radio equipment housing**” means the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of radio equipment housing;
- “**Development Procedure Order**” means the Town and Country Planning (Development Procedure) (No. 2) Order 2013²;
- “**dwellinghouse**” does not include a building containing one or more flats, or a flat contained within such a building;
- “**ground level**” means the surface of the ground immediately adjacent to the building or structure in question, and where the ground is sloping, the ground level is the highest part of the surface of the ground next to the building or structure;
- “**highway**” means a highway maintainable at the public expense within the meaning of section 3 of the Highways Act 1986, and any part of such a highway;
- “**land controlled by an operator**” means land occupied by the operator in right of a freehold interest or a leasehold interest under a lease granted for a term of not less than 10 years;
- “**mast**” means a radio mast or a radio tower;
- “**operations in accordance with a licence**” means development carried out by an operator in pursuance of a right conferred on that operator under the telecommunications code, and in accordance with any conditions relating to the application of that code imposed by the terms of the operator’s licence;
- “**owner**” means any person who is the estate owner in respect of the fee simple, or who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired;
- “**site display**” means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public;
- “**small antenna**” means an antenna which —

² SD 0238/13

- (a) is for use in connection with a telephone system operating on a point fixed multi-point basis;
- (b) does not exceed 50 centimetres in any linear measurement;
- (c) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres,

and any calculation for the purposes of paragraph (b) and (c) must exclude any feed element, reinforcing rim mountings and brackets;

“**telecommunications apparatus**” has the meaning given by paragraph 1 of Schedule 1 to the 1984 Act, and includes radio equipment housing;

“**telecommunications code**” means the code contained in Schedule 1 to the 1984 Act;

“**telecommunications code system operator**” means a person who has been granted a licence under section 5 of the 1984 Act which applies the telecommunications code to him in pursuance of section 8 of that Act;

“**telecommunication system**” has the meaning given by section 2 of the 1984 Act; and

“**tenant**” means the tenant of an agricultural holding any part of which is a building comprised in the land to which the application relates.

4 Planning approval for development with respect to telecommunications

- (1) Planning approval is granted for development specified in Schedule 1 on any land other than land within a conservation area, to the extent and subject to such conditions as specified in that Schedule.
- (2) Planning approval is granted for development specified in Schedule 2 on any land within a conservation area, to the extent and subject to such conditions as specified in that Schedule.
- (3) Paragraphs (1) to (2) do not apply to a development which —
 - (a) contravenes any condition lawfully imposed on the grant of planning approval for development of land;
 - (b) requires or involves the formation, laying out or material widening of a means of access to an existing highway used by vehicular traffic; or
 - (c) creates an obstruction to the view of persons using any such highway so as to be likely to cause danger to such persons.

5 Direction that generalised approval does not apply

- (1) If the Department is satisfied that any of the development specified in Schedules 1 and 2 should not be carried out in any particular area without planning approval granted pursuant to an application for the

purpose, the Department may by an instrument in writing direct that article 4 does not apply to such development in any such area as may be specified in the direction.

- (2) The Department –
- (a) must give notice of any direction under paragraph (1) in 1 or more newspapers published and circulating in the Island,
 - (b) may give such other notice of the direction as it thinks fit, and
 - (c) must make a copy of the direction available for inspection by any person at all reasonable times at the principal office of the Department.

6 Transitional Provisions

Any application for a determination as to whether prior approval is required under the Town and Country Planning (Permitted Development) (Telecommunications) Order 2012³ made before this Order comes into operation is to be determined in accordance with that Order as if this Order had not been made.

7 Revocation

The Town and Country Planning (Permitted Development) (Telecommunications) Order 2012 is revoked.

MADE 10 DECEMBER 2013

D C CRETNEY
Minister for Infrastructure

³ SD 391/12

SCHEDULE 1

[Article 4(1)]

DEVELOPMENT OUTSIDE CONSERVATION AREAS

1 Permitted development

Development by or on behalf of a telecommunications code system operator for the purpose of the operator's telecommunications system in, on, over or under land controlled by that operator or in accordance with the operator's licence, consisting of –

- (a) the installation, alteration or replacement of any telecommunication apparatus; or
- (b) the use of land in an emergency for a period not exceeding 12 months to station and operate moveable telecommunication apparatus required for the replacement of unserviceable telecommunication apparatus, including the provision of moveable structures on the land for the purposes of that use, or
- (c) development ancillary to radio equipment housing.

2 Development not permitted

Development is not permitted by paragraph 1(a) if –

- (a) in the case of the installation of apparatus (other than on a building or other structure) the apparatus would exceed a height of 15 metres above ground level;
- (b) in the case of the alteration or replacement of apparatus already installed (other than on a building or other structure) the apparatus, excluding any antenna, would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;
- (c) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the height of the apparatus (taken by itself) would exceed –
 - (i) 15 metres, where it is installed, or is to be installed, on a building or other structure 30 metres or more in height; or
 - (ii) 10 metres in any other case;
- (d) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building or structure by more than –

- (i) 10 metres, in the case of a building or structure 30 metres or more in height;
 - (ii) 8 metres, in the case of a building or structure more than 15 metres but less than 30 metres in height; or
 - (iii) 6 metres, in any other case;
- (e) in the case of the installation, alteration or replacement of apparatus (other than an antenna) on a mast, the height of the mast would, when the apparatus was installed, altered, or replaced, exceed any relevant height limit specified in respect of apparatus in sub-paragraphs (a), (b), (c) and (d), and for the purposes of applying the limit in sub-paragraph (c), the words “(taken by itself)” are omitted.
- (f) in the case of the installation, alteration or replacement of any apparatus other than—
- (i) a mast,
 - (ii) an antenna,
 - (iii) a public call box,
 - (iv) any apparatus which does not project above the level of the surface of the ground, or
 - (v) radio equipment housing,
- the ground or base area of the structure would exceed 1.5 square metres;
- (g) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a dwellinghouse or a mast) less than 15 metres in height; on a mast located on such a building or structure or, where the antenna is to be located below a height of 15 metres above ground level, on a building or structure (other than a dwellinghouse or mast) 15 metres or more in height —
- (i) the antenna is to be located on a wall or roof slope facing a highway within 20 metres of the building or structure on which the antenna is to be located;
 - (ii) in the case of dish antennas, the size of one dish would exceed 0.9 metres or the aggregate size of all the dishes on the building, structure or mast would exceed 1.5 metres, when measured in any dimension;
 - (iii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna) would result in the presence on the building or structure of more than 2 antenna systems; or

- (iv) the building or structure is a registered building or ancient monument;
- (h) in the case of the installation, alteration or replacement of an antenna on a building or structure (other than a dwellinghouse or a mast) 15 metres or more in height or on a mast located on such a building or structure, where the antenna is located at a height of 15 metres or above, measured from ground level —
 - (i) in the case of dish antennas, the size of any dish would exceed 1.3 metres or the aggregate size of all the dishes on the building, structure or mast exceed 3.5 metres, when measured in any dimension;
 - (ii) in the case of antennas other than dish antennas, the development (other than the installation, alteration or replacement of one small antenna) would result in the presence on the building or structure of more than 3 antenna systems; or
 - (iii) the building or structure is a registered building or ancient monument;
- (i) in the case of the installation of a mast, on a building or structure less than 15 metres in height, such a mast would be within 20 metres of a highway;
- (j) in the case of the installation, alteration or replacement of radio equipment housing —
 - (i) the development is not ancillary to the use of any other telecommunication apparatus;
 - (ii) it would exceed 29 cubic metres or, if located on the roof of a building, 10 square metres in area.

3 Conditions and procedure

- (1) Development is permitted by paragraph 1(a) and paragraph 1(c) subject to the condition that any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building in accordance with that permission, so far as practicable, be sited so as to minimise its effect on the external appearance of the building.
- (2) Development is permitted by paragraph 1(a) and paragraph 1(c) subject to the condition that any apparatus or structure provided in accordance with that permission must be removed from the land, building or structure on which it is situated, as soon as reasonably practicable after it is no longer required for telecommunication purposes, and such land, building or structure must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the Department and the developer.

- (3) Development is permitted by paragraph 1(b) subject to the condition that any apparatus or structure provided in accordance with that permission must be removed from the land at the expiry of the relevant period and the land restored to its condition before the development took place.
- (4) Development consisting of the construction, installation, alteration or replacement of —
- (a) a mast;
 - (b) an antenna on a building or structure (other than a mast) where the antenna (including any supporting structure) would exceed the height of the building or structure at the point where it is installed or to be installed by 4 metres or more;
 - (c) a public call box; or
 - (d) radio equipment housing with a volume in excess of 2.5 cubic metres or of development ancillary to it,
- is permitted but except in case of emergency is subject to the conditions and procedures set out in sub-paragraphs (5) to (16).
- (5) The developer must give notice of the proposed development to any person (other than the developer) who is an owner of the land to which the development relates, or a tenant, before making the application as required by sub-paragraph (7)—
- (a) by serving a notice as required by paragraph 4 on every such person whose name and address is known to the developer; and
 - (b) where the developer has taken reasonable steps to ascertain the names and addresses of every such person but has been unable to do so, by publication of the notice in at least one newspaper published and circulating in the Island.
- (6) Where the proposed development consists of—
- (a) the installation of a mast within 3 kilometres of the perimeter of the Airport, the developer must notify the Ports Director; or
 - (b) the installation of a public call box, the developer must notify the Department's Highways Division;
- before the making the application as required by sub-paragraph (7).
- (7) Before beginning the development, the developer must apply to the Department for a determination as to whether the prior approval of the Department will be required to the siting and appearance of the development.
- (8) The application must be accompanied —
- (a) by a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid;

- (b) if the development involves the construction or installation of one or more antennae, by a written declaration that the equipment and installation to which the application relates is so designed that it will, when constructed or installed, operate, having regard to its location and the manner in which it has been constructed or installed, in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-ionising Radiation Protection, as expressed in the EU Council recommendation of 12 July 1999⁴ on the limitation of exposure of the general public to electromagnetic fields (0Hz to 300 GHz);
 - (c) a plan showing the area of search for the development;
 - (d) details of the proposed structure including the type of structure and its dimensions, height of existing building and details of the size of the equipment housing and materials;
 - (e) a statement explaining the reasons for the choice of design;
 - (f) technical information including the frequency, modulation characteristics, power output and height of the proposed antenna;
 - (g) technical justification consisting of details about the purpose of the site and why the particular development is required;
 - (h) details of any alternative sites rejected with a justification for rejecting them. This should include existing masts, structures and other buildings within the search area;
 - (i) an explanation if no alternatives considered;
 - (j) where sub-paragraph (5) applies, by evidence that its requirements have been satisfied; and
 - (k) where sub-paragraph (6) applies, by evidence that the Ports Director or the Department's Highways Division, as the case may be, has been notified of the proposal.
- (9) Upon receipt of the application under sub-paragraph (8)) the Department must—
- (a) in the case of the construction, installation, alteration and replacement of a mast; or of an antenna on a building or structure (other than a mast) give notice and a copy of the application to the following —
 - (i) the Director of Public Health;
 - (ii) the local authority in whose district the development will take place;
 - (iii) the Department's Highways Division; and

⁴ 1999/519/EC

- (iv) in the case of the installation of a mast within 3 kilometres of the perimeter of the Airport, the Ports Director,
and must give the consultees at least 21 days within which to comment.
 - (b) in the case of development which does not fall within sub-paragraph (9)(a), give notice and a copy of the application to the following—
 - (i) the local authority in whose district the development will take place; and
 - (ii) the Department's Highways Division,
and must give the consultees at least 21 days within which to comment.
 - (c) follow the procedure for giving notice of the proposed development set out in Article 5(1) and (2) of the Development Procedure Order and give notice —
 - (i) by site display in at least one place or near the land to which the application relates for not less than 21 days, and
 - (ii) by publication of the notice in at least one newspaper published and circulating in the Island.
- (10) The Department must take into account any representations made to them as a result of consultations or notices given under sub-paragraph (9) when determining the application made under sub-paragraph (7).
- (11) The Department must determine the application and any appeal in accordance with the Development Procedure Order, subject to the modifications specified in paragraph 5.
- (12) Where the application is approved, the development must not be begun —
- (a) if an appeal is made, until the appeal is determined or withdrawn;
or
 - (b) if no appeal is made, until the time within which an appeal may be made has expired.
- (13) The development must be carried out in accordance with the details approved except to the extent that the Department otherwise agrees in writing.
- (14) Where the application is approved, the development must be begun no later than the expiration of 5 years beginning with the date of that approval.
- (15) In a case of emergency, development is permitted by paragraph 1 subject to the condition that the operator must give written notice to the Department of such development as soon as possible after the emergency begins.

- (16) In this paragraph “relevant period” means a period which expires —
- (a) 12 months from the commencement of the use permitted by paragraph 1(b), as the case may be, or
 - (b) when the need for such apparatus, structure or use ceases, whichever occurs first.

4 Developer’s notice

The notice required by paragraph 3(5)(a) must be signed and dated by or on behalf of the developer and contain —

- (a) the name of the developer;
- (b) the address or location of the proposed development;
- (c) a description of the proposed development (including its siting and appearance and the height of any mast);
- (d) a statement that the developer will apply to the Department for a determination as to whether prior approval will be required to the siting and appearance of the development;
- (e) a statement that the application must be available for public inspection at the offices of the Department and the local authority in which the development will take place, during usual office hours;
- (f) a statement that any person who wishes to make representations about the siting and appearance of the proposed development may do so in writing to the Department;
- (g) the date by which any such representations should be received by the Department, being a date not less than 14 days from the date of the notice; and
- (h) the address to which such representations should be made.

5 Application of the Development Procedure Order as modified

- (1) Articles 1 to 3, 5(1) and (2), 6 to 8 and 12 of, and Schedule 3 to, the Development Procedure Order applies with respect to applications under paragraph 3, as modified by the following provisions of this paragraph.
- (2) In article 3 –
 - (a) renumber the existing text as paragraph (1);
 - (b) in the definitions of “applicant” and “application” for “planning approval” substitute “prior approval”.
 - (c) after paragraph (1) insert –

“(2) In this Order a reference to paragraph 3(8) is a reference to paragraph 3(8) of Schedule 1 to the Town and Country

Planning (Permitted Development) (Telecommunications) Order 2013.”.

- (3) In article 6 –
- (a) in paragraphs (1) and (7) for “planning approval” substitute “prior approval”;
 - (b) for paragraph (2) substitute –
 - “(2) In paragraph (1) “the relevant date”, in relation to an application, means –
 - (a) the date specified in the notice under paragraph 3(9)(c) or
 - (b) the expiry of the periods set out in paragraph 3(9)(a) and (b),whichever is the latest.”.
 - (c) in paragraphs (3) and (4)(c) for “article 5” substitute “paragraph 3(9)”;
 - (d) for paragraph (5) substitute –
 - “(5) The Department must wherever possible make an initial decision on every application for prior approval within 56 days of the date on which the application is received.”
- (4) For article 7(2)(a) substitute –
- “(a) in the case of a prior approval, the conditions (if any) subject to which the approval is granted”.
- (5) In article 12 omit “, 10(8) or 11(5)”.
- (6) In Schedule 3 –
- (a) in paragraph 1 –
 - (i) in the definition of “inquiry” for “articles 8(7), 10(8) or article 11(5)” substitute “article 8(7)”;
 - (ii) in the definition of “written representation procedure” omit “or article 10(8)”;
 - (b) in paragraph 4 omit subparagraph (3).

SCHEDULE 2

[Article 4(2)]

DEVELOPMENT WITHIN CONSERVATION AREAS

1 Permitted development

Development by or on behalf of a telecommunications code system operator for the purpose of the operator's telecommunications system in, on, over or under land controlled by that operator or in accordance with the operator's licence, consisting of the installation, alteration or replacement of any telecommunication apparatus.

2 Development not permitted

Development is not permitted by paragraph 1 if it consists of the installation of apparatus above ground (otherwise than inside an existing building or other structure), unless carried out in an emergency.

3 Conditions

- (1) The land must be reinstated to its condition before the development took place.
- (2) Where traditional materials such as stone setts, cobbles, flags or kerbstones are disturbed, they must be carefully set aside, stored and replaced on completion of the development.
- (3) In the case of development in an emergency, the operator must give written notice to the Department of such operations as soon as possible after the emergency begins.
- (4) Any apparatus installed in an emergency must be removed from the land, building or structure on which it is situated at the expiry of the relevant period, and that land, building or structure must be restored to its condition before the operations took place.
- (5) In this paragraph "the relevant period" means a period which expires —
 - (a) 12 months from the commencement of the development in question, or
 - (b) when the need for the apparatus ceases,whichever occurs first.

EXPLANATORY NOTE***(This note is not part of the Order)***

This Order replaces the 2012 Order of the same name with some consequential amendments. The changes were necessary due to the replacement of the Town and Country Planning (Development Procedure) Order 2005 with the Town and Country Planning (Development Procedure) (No. 2) Order 2013.