POLICY NOTE

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND DEEMED APPLICATIONS) (SCOTLAND) AMENDMENT (No. 3) REGULATIONS 2017

SSI 2017/186

1. The above instrument was made in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997. The instrument is subject to negative procedure.

Policy Objectives

2. The instrument amends the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 with regard to the application fee for a determination as to whether prior approval is required in relation to permitted development (PD) rights.

3. The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017 – which is also before Parliament - includes changes to PD rights for electronic communications infrastructure (e.g. communication masts, antennas and street cabinets). PD rights are a planning permission granted in legislation, which removes the need to apply for planning permission, provided the developer complies with any restrictions and conditions attached to the PD rights.

4. As part of these amendments a form of prior approval is introduced for ground based masts in certain circumstances. This means that while the masts in question are considered acceptable in principle in planning terms, the planning authority has the right to approve the siting or appearance of the mast, and can refuse this.

5. The form of prior approval in this case has requirements around publicity and consultation beyond that in other prior approval procedures associated with PD rights in Scotland. This means higher costs for planning authorities, and so a higher fee for prior approval is being put in place for these specific PD rights.

6. The issue of the PD rights and prior approval is discussed in the policy note for the changes in the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2017.

Consultation

7. A public consultation paper was issued on 10 August 2016 and ran until 4 November 2016. Views were sought on draft legislation based mainly on research recommendations, and on what further extensions to PD rights might be appropriate, particularly in designated areas where additional restrictions on PD rights apply. The consultation paper sought views on a proposed fee of £150 in relation to prior approval.

8. There were 38 responses to the consultation from the communications industry, planning authorities, heritage bodies, individuals, agencies and government (such as the Ministry of Defence, Scottish Natural Heritage and Historic Environment Scotland), and some consultants and wider business interests.

9. As regards the proposed fee, many respondents felt unable to comment, though industry respondents who commented were content with the fee. Planning authorities tended to view the proposed fee as inadequate given the procedural requirements involved.

10. Having considered the responses, we have revised our proposed fee to £300.

11. An analysis of the consultation response, including a list of the respondents (other than those who requested anonymity) has been published and is available via the following Link: https://beta.gov.scot/publications/consultation-relaxation-planning-controls-digital-communications-infrastructure-analysis-responses/ .

Impact Assessments

12. We have done an Equality Impact Assessment (EqIA) for the overall package of changes to PD rights. We have also screened it as regards a Children's Rights and Welfare Impact Assessment, but concluded no such assessment was necessary.

13. The EqIA concluded there were no significant or differential impacts on particular equality groups. The assessment is attached.

Financial Effects

14. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the changes is considered to be positive for business, removing the need to apply for planning permission for certain developments and, where prior approval is required for a new ground based mast, reducing the costs of processing applications (e.g. with a lower fee than for an application for planning permission).

Scottish Government

Local Government and Communities Directorate

31 May 2017