Llywodraeth Cymru
Welsh Government

Section 3 Annex: Prior Approval

Development Management Manual

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Section 3 Annex

Prior Approval

Contents

1.0 Introduction

1.1 Prior approval is a streamlined application process set out in the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ("the GPDO"). It allows certain developments to proceed without the necessity of a full planning application, provided the criteria specified in the GPDO is met.

1.2 Before commencing particular operations, conditions of the permitted development class require the developer to apply to the local planning authority (LPA) to ascertain whether prior approval is needed, or a determination as to whether the prior approval of the LPA is required, for specific aspects of the development. This application process addresses a limited range of issues rather than the extensive considerations typical of a full planning application. Once an application is submitted, the determination procedure can be viewed as a two-stage process. Firstly, the LPA will determine whether prior approval is required and must notify the applicant of its decision. Secondly, if the LPA decides that prior approval is required, stage two involves detailed consideration of the information submitted by the applicant and either granting or refusing that approval within the specified time period.

1.3 This annex provides procedural advice for the mostly used prior approval processes set out in Schedule 2 to the GPDO, specifically:

- Agricultural (Part 6) and Forestry development (Part 7)
- Telecommunications Code System Operators (Part 24)
- Demolition of Buildings (Part 31)

1.4 The annex also sets out how LPAs must have regard to the requirements of the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) when considering a prior approval application.

1.5 The guidance provided on commencement, appeals, compensation, fees and enforcement apply equally to the mentioned parts and their approval procedures. These are addressed together in the relevant sections below.

2.0 Temporary use of land for camping

Process: Type of development

2.1 Class BA of Part 4 of Schedule 2 of the GPDO enables the temporary use of land for a recreational campsite. This use of land cannot occur unless the landowner or other developer has applied to the LPA for a determination as to whether prior approval will be required.

2.2 The number of days in each calendar year for which land may be used under Class BA varies according to certain statutory landscape designations. If any part of the land falls within a National Park, Area of Outstanding Natural Beauty or world Heritage site, consent is granted for the use of land for 28 days. In other areas, consent is granted for the use of the land for 60 days.

2.3 Use of land under class BA does not include the siting of caravans, which are subject to separate permitted development rights set out in Part 5 of schedule 2 of the 1995 Order. Use of land for camping in connection with a festival will remain in class B and is not affected by this change.

2.4 Use of land for a temporary recreational campsite is not permitted by class BA in the following areas, and in all such areas, planning permission must be sought:

(a) on a site of a scheduled monument;
(b) on a site in a special area of conservation;
(c) in a safety hazard area;
(d) in a military explosives storage area;
(e) on a site of special scientific interest;
(f) on a Ramsar site;
(g) on a site of a listed building;
(h) on a site in a special protection area:
(i) on a site within Flood Zones 2 or 3; or
(j) on land within 100 metres of a protected dwelling other than for the use of any private way.

2.5 A "protected dwelling" is a dwelling occupied by someone who is neither the landowner nor operator of the recreational campsite. A "private way" is an already existing way where the site operator has a legal right to use the way for access their land. The above exemption ensures site operators can continue to make lawful use of an existing private way which passes within 100 metres of a protected dwelling.

2.6 Consent is only granted for the period of one calendar year, and a new application will be required for the next calendar year.

<u>Notification of intended use of land for a temporary campsite</u>

2.7 Before using land for a temporary campsite, the site operator should apply to the planning authority to see whether prior approval is required for the campsite. The planning authority must decide within 28 days of receipt whether or not prior approval is needed.

<u>Validation requirements</u>

2.8 A valid application must include a copy of the site plan. It must also provide the information set out in Paragraph BA3 of Part 4 of schedule 2 of the GDPO. This is:

- The proposed dates of use
- The proposed toilet and waste water disposal facilities

- The proposed waste disposal facilities
- Details of access from the highway
- The proposed layout of pitches and other required amenities

2.9 The standard application form notifying LPAs of the intent to use land for a recreational campsite, and seeking a view on whether prior approval is required, is hosted on the Welsh Government website. It asks for detail on the above matters.

2.10 The form seeks to draw the applicant's attention to the need for this information as part of the application process. It invites the applicant to set out any relevant explanatory comments on the face of the form.

2.11 An application need not be made on this form, or set out this information on the face of the form. As long as all the above information is within the application, then it remains valid.

2.12 An application fee is not required for this application type.

Considerations for the LPA

2.13 Once details have been submitted for consideration under the terms of the GPDO, the objective should be to evaluate the possible environmental or amenity impact arising from the proposed means of disposing of waste and waste water, and the likely impact on the local highway network arising from the proposed means of access and the frequency of its use based on the number of site users.

2.14 Prior approval is required for development granted consent under a development order which may adversely affect a protected site, as outlined in Regulation 75 of the Conservation of Habitats and Species Regulations 2017. This includes the temporary use of land for camping. The potential risk arising to habitats from temporary campsites is most likely to arise from the disposal of waste or waste water. The applicant is required to set out the means of managing waste and waste water on-site as a part of this application. This should include storage of waste or waste water onsite prior to collection. Prior approval is therefore required where the plans for disposal of waste or waste water create any uncertainty that the proposed development would not effectively avoid adverse impact on a habitat, or might present a risk of pollution. The applicant can seek a formal view from Natural Resources Wales on this matter prior to the submission of the application.

2.15 The waste management plan for the site should be assessed for compliance with the local authority's waste management strategy, including separation of waste as appropriate. The volume of waste generated by the campsite may exceed thresholds for domestic waste collection, in which case the application should set out how waste from the site would be disposed of commercially.

2.16 The constraints imposed by the GPDO prevent the use of land within 100 metres of a dwelling occupied by someone who is not the owner or operator of the campsite. Nevertheless, there may arise circumstances where the size of the proposed campsite, and the numbers of site users, may still present an amenity impact.

2.17 The number of vehicle journeys generated by the proposed use will be indicated by the number of proposed pitches in use at any time, and the remoteness of the proposed campsite from amenities, such as shops or services. Consideration should be given to the ability to leave and join the local highway network to accommodate the likely increase in the number of journeys. This should include visibility at the access point to the highway, and how the site operator proposes to hold or park vehicles during any delay in entering or leaving the site due to congestion. Proposed means of managing delayed vehicles should not include use of, or affect traffic on, the highway itself. Special regard should be had for access via single track roads, as unless carefully managed, such sites are likely to present adverse impact on the use of the highway.

2.18 Whilst there may be an expectation or desire to consider other aspects of the proposed campsite at this stage, the amendment to the 1995 Order does not enable these issues to be taken into account in a decision on the requirement for prior approval at this stage. LPAs should avoid issuing a decision which relies on reasons not addressed in Para BA.3 of Part 4 of schedule 2.

Determination

2.19 The LPA has 28 days to decide and notify the applicant if prior approval is required for the proposed development details. This period starts from the day after the LPA receives a valid application. There is no scope to extend the determination period (i.e. stage one – determination whether prior approval is required), nor should the discretionary stage two (i.e. where prior approval is required, the granting or refusal of that approval) be triggered for irrelevant reasons. Therefore, LPAs must verify early during the determination period that the intended development does benefit from permitted development rights (and does not require a planning application) to allow sufficient time to consider where prior approval is required.

Determination: When Prior Approval is Not Required

2.20 If the LPA determines that prior approval is not required, the development may proceed:

- when the applicant receives written notice of such a determination; or

- after the 28-day determination period has expired.

2.21 The LPA should give notice of any determination as soon as possible, rather than allowing the 28-day period to expire without notifying the applicant. The LPA therefore needs to devise and use reliable and verifiable means to bring such a notice to the attention of the applicant.

2.22 The development must be carried out in accordance with the details submitted with the application for the determination or as otherwise agreed in writing by the authority.

2.23 There will likely be a desire for the site operator to seek to vary the days of operation due to the influence of weather on demand for pitches. It is open to the LPA to vary the days of operation, in writing, prior to the use of the land on those days, by requesting a written submission from the applicant in the same format as was used in the initial application. This will avoid the need for a new full submission.

2.24 Temporary use of the land on days which have not been agreed in advance by the LPA will constitute unlawful development.

<u>Determination: When Prior Approval is Required</u>

2.25 If the LPA gives notice within the 28-day determination period that prior approval is required, it will then have eight weeks from the validation of an application to issue its decision, or such longer period as may be agreed in writing (see Article 23 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the DMPWO")).

2.26 The LPA should set out clearly in its decision notice, what specific information is required to support the application. The scope and detail of that request for information should be based on the issues identified during the consideration of the application for consideration of prior approval. They should also be proportionate to the scale and potential impact of the proposed development. Refusal to validate such an application will be subject to the non-validation appeal process set out in Article 24C of the DMPWO.

2.27 Should the LPA resolve that prior approval is required, and subsequently refuse permission, the applicant would be entitled to appeal against refusal of permission. The LPA could also be liable to pay compensation in accordance with the Town and Country Planning (Compensation) (Wales) (No.2) Regulations 2014.

Variation after submission

2.28 If the site operator wishes to vary the scheme after approval then the details of variation should be subject to the same approval process outlined above, and treated as a new application. The exception to this is when the site operator wishes to vary dates only. A simple written request may be submitted by the site operator in advance of the varied dates.

2.29 Regard should be had for any planned events or activities which are likely to coincide with the proposed revised dates, and the ability of the local highway network to accommodate likely increased traffic on those dates.

2.30 The planning authority should either accept or refuse the revised dates as it deems appropriate. The decision should be issued in writing within 28 days, with referral to the case reference for the original campsite application.

3.0 Agricultural and Forestry Development

Process: Type of development

3.1 In the case of agricultural development on agricultural land comprised in units of 5 hectares or more (Class A, Part 6 of the GPDO), or forestry development on land of any size (Part 7), development involving the following operations cannot be exercised unless the farmer or other developer has applied to the LPA for a determination as to whether prior approval will be required for certain details:

- new buildings,
- significant extensions and/or alterations to existing buildings,
- formations or alteration of agricultural and forestry roads,
- certain excavations or waste deposits, and
- the placing or assembly of fish tanks in any waters.

3.2 "Significant extension" and "significant alteration" mean any extension or alteration of the building where the cubic content of the original building would be exceeded by more than 10% or the height of the building as extended or altered would exceed the height of the original building[1].

3.3 In National Parks and certain areas adjoining the Snowdonia National Park (Article 1(6) land)[2], all extensions and alterations to buildings are subject to this procedure and the placing or assembly of fish tanks in any waters requires a planning application to be made to the LPA.

[1] As defined in Paragraph D.1 of Part 6, and Paragraph A.3 of Part 7 of Schedule 2 to the GPDO.
[2] As defined in Article 1(6) of the GPDO.

3.4 The types of development on smaller agricultural units of less than 5 hectares (but no smaller than 0.4 hectare) for which the GPDO also grants planning permission (see Class B, Part 6 of Schedule 2) are not subject to the determination procedure, except on Article 1(6) land, where the procedure applies to extensions and alterations of buildings and the provision, re-arrangement or replacement of roads.

3.5 The siting of a new agricultural or forestry building, road, excavation or waste deposit, or fish tank can have a considerable impact on the surrounding landscape. Developments should be assimilated into the landscape without compromising the functions they are intended to serve. Further advice about the design, appearance and siting of agricultural and forestry developments can be found in Annex A of Technical Advice Note (TAN) 6: Planning for Sustainable Rural Communities (2010). General principles of good design are set in Section 3 of Planning Policy Wales and further elaborated in Technical Advice Note 12 "Design" (2016).

Process: Validation requirements

3.6 To be a valid application, Paragraphs A.2 and B.6 Part 6, and paragraph A.2(1) Part 7 of the GPDO requires an application for prior approval to be accompanied by[3]:

- a written description of the proposed development,
- a written description of the materials to be used,
- a plan indicating the site; and
- the correct fee.

Process: Considerations for the LPA

3.7 Once details have been submitted for approval under the terms of the GPDO, the objective should be to evaluate the impact of the development on the landscape concerning visual amenity. Additionally, it is essential to preserve ancient monuments and their surroundings, archaeological sites, listed buildings and their settings, and areas of recognized nature conservation value. In making their determination, LPAs may consider the following:

- The siting, design, and external appearance of a proposed new agricultural or forestry building and its relationship to its surroundings.
- The siting and construction methods of roads.
- The siting of excavations or waste deposits that individually or collectively exceed 0.5 hectares within the unit.
- The siting and appearance of fish tanks (cages).

[3] See List 11 in Section 7 Annex: Planning Applications – Lists of Validation Requirements

3.8 Details should be regarded in much the same light as applications for approval of reserved matters following the grant of outline planning permission. In operating these controls, LPAs should always have full regard to the operational needs of the agricultural and forestry industries and to the need to avoid imposing any unnecessary or excessively costly requirements. Long term conservation objectives will often be served best by ensuring that the rural economy, including farming and forestry which are prominent in the rural landscape, is able to function successfully.

3.9 Special considerations apply to forestry roads. Usually, a new road will be to assist new planting or timber harvesting. This is subject to a separate licensing regime through Natural Resources Wales (NRW) which includes consultation with local authorities and other bodies. Applicants should set out any road proposals in their licensing application to ensure that the environmental acceptability of new roads and the siting and landscaping of the woodland are considered together. LPAs should not exercise their right to call for full details of roads which had been included in a licencing application and approved by NRW after consultation with the local authority.

Determination:

3.10 The LPA has 28 days to decide and notify the applicant if prior approval is required for the proposed development details. This period starts from the day after the LPA receives a valid application. There is no scope to extend the determination period (i.e. stage one – determination whether prior approval is required), nor should the discretionary stage two (i.e. where prior approval is required, the granting or refusal of that approval) be triggered for irrelevant reasons. Therefore, LPAs must verify early during the determination period that the intended development does benefit from permitted development rights (and does not require a planning application) to allow sufficient time to consider where prior approval is required.

3.11 Provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Only in cases where the authority considers that a specific proposal is likely to have a significant impact on its surroundings would the Welsh Government consider it necessary for the authority to require the formal submission of an application for prior approval.

3.12 There will often be scope for informal negotiations with the developer prior to submitting an application for prior approval to the LPA. Developers for their part may find it useful to provide more than the minimum information required by the GPDO when informing authorities of their proposals, if this is readily available. For example, additional plans or sketches for a proposed new building may clarify the visual impact of the proposal.

Determination: When Prior Approval is Not Required

3.13 If the LPA determines that prior approval is not required, the development may proceed:

i. when the operator receives written notice of such a determination; or
ii. after the 28-day determination period has expired.

3.14 The authority should give notice of any determination as soon as possible, rather than allowing the 28-day period to expire without notifying the applicant. The authority therefore needs to devise and use reliable and verifiable means to bring such a notice to the attention of the applicant.

3.15 The development must be carried out in accordance with the details submitted with the application for the determination or as otherwise agreed in writing by the authority.

Determination: When Prior Approval is Required

3.16 If the LPA gives notice within the 28-day determination period that prior approval is required, it will then have eight weeks from the validation of the application to issue its decision, or such longer period as may be agreed in writing (see Article 23 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the DMPWO")).

3.17 Paragraphs A.2(2)(iv)(aa) and B.6(b) of Classes A and B respectively of Part 6 and paragraph A.2(1)(d)(i) of Part 7 of the GPDO requires the applicant to display a site notice on or near the land on which the proposed development is to be carried out. The notice must be displayed within 28 days from the date on which the LPA gave notice that prior approval was required to the applicant, and must be in position for not less than 21 days. The site notice shall contain:

- the name of the applicant,
- the address or location of the proposed development,
- a description of the development and proposed materials, a
- statement that prior approval is required for the siting design and external appearance of the building or, the siting and means of construction of the private way,
- name and address of the LPA,
- signature and date on behalf of the applicant.

3.18 If the notice is, without any fault or intention of the applicant, removed, obscured or defaced within the-21-day period, then the applicant should be treated as having complied with this requirement. The applicant is, however, expected to take reasonable steps to protect the notice and replace it if it is removed or damaged.

3.19 Subject to the normal criteria governing the use of conditions in planning permission, conditions may be imposed when approval is given. Guidance on the of planning conditions is available in Welsh Government Circular 016/2024: The use of planning conditions for development management.

Notice of completion:

3.20 For specific developments under Part 6 (Agricultural Buildings and Operations) of the GPDO, the developer is required to inform the LPA in writing within seven days of the substantial completion of the development. The types of development that necessitate this notification are as follows:

- Class A(a)- the erection, extension or alteration of a building
- Class B(a)- the extension or alteration of an agricultural building

4.0 Development by Telecommunications Code System Operators

Process: Type of development

4.1 Under paragraph A.2(4) of Part 24 of the GPDO, certain development permitted is conditional upon the operator making an application to the LPA for a determination whether prior approval will be required for certain details. This applies to Class A development (unless in an emergency, see section 3.26-3.29 below) consisting of the construction, installation, alteration or replacement of:

(i) a mast;
(ii) 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 six metres or more;
(iii) a public call box;
(iv) radio equipment housing where the volume of any single development is in excess of 2.5 cubic metres;

4.2 For such development, the developer must apply to the LPA for its determination as to whether prior approval will be required to the siting and appearance of the proposed development. The LPA will have 56 days, beginning with the date on which it receives the application, in which to make and notify its determination on whether prior approval is required to siting and appearance and to notify the applicant of its decision to give or refuse such approval. There is no power to extend the 56-day period. If no decision is made, or the LPA fails to notify the developer of its decision within the 56 days, permission is deemed to have been granted.

Process: Validation requirements

4.3 Paragraph A.3(4) of Part 24 requires that an application to the LPA must be accompanied by[4]:

a) the developer's contact address, and the developer's e-mail address if the developer has one;

[4] See List 12 in Section 7 Annex: Planning Applications – Lists of Validation Requirements

b) a written description of the proposed development;
c) a plan indicating its proposed location;
d) evidence that the owner or agricultural tenant of the land to which the application relates has been notified of the proposed development;
e) where the proposed development consists of the installation of a mast within 3 kilometres of the perimeter of an aerodrome, evidence that the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator (as appropriate) has been notified of the proposal; and
f) the correct fee.

4.4 Also, for development involving the construction or installation of one or more antennas (unless they are all small cell antenna), the application must also be accompanied by a declaration that the equipment and installation, when constructed or installed, will operate in full compliance with the International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines.

4.5 Further guidance is provided in The Code of Best Practice on Mobile Phone Network Development, including additional information which operators are strongly encouraged to provide to the LPA in making an application.

4.6 The LPA must send confirmation to the developer of the date on which the application has been received and is considered valid. The date a valid application, as defined in Part 24 of the GPDO, is received is day 1 of the 56-day determination period.

Process: Consultation

4.7 Upon receipt of a valid application, the LPA must:

(a) For development which, in their opinion, falls within a category set out in the table of schedule 4 to the DMPWO (as amended), consult the authority or person mentioned in relation to that category, except where—
   i. the LPA are the authority so mentioned; or
   ii. the authority or person so mentioned has advised the LPA that they do not wish to be consulted,

and give the consultees at least 14 days within which to comment.

(b) In the case of development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated or which would affect a right of way to which Part 3 of the Wildlife and Countryside Act 1981 (public rights of way) applies, give notice of the proposed development, in the appropriate form set out in Schedule 3 to the DMPWO (as amended)—
   i. by site display in at least one place on or near the land to which the application relates for not less than 21 days and

    ii. by local advertisement.

(c) In the case of development which does not fall within paragraph (b) above but which involves development carried out on a site having an area of one hectare or more, give notice of the proposed development, in the appropriate form set out in [Schedule 3 to the DMPWO]() (as amended)—

    i. by site display in least one place on or near the land to which the application relates for not less than 21 days, or
    ii. by serving notice on any adjoining owner or occupier, and
    iii. by local advertisement.

(d) In the case of development which does not fall within paragraphs (b) or (c) above, give notice of the proposed development, in the appropriate form set out in Schedule 3 to the DMPWO (as amended)—

    i. by site display in at least one place on or near the land to which the application relates for not less than 21 days, or
    ii. by serving the notice on any adjoining owner or occupier.

4.8 The LPA should begin the consultations and notification as set out in the DMPWO as early as possible on receipt of a valid application. This is to allow sufficient time in which to consider the application in the light of the representations received due to the need to issue a determination within the 56-day period.

4.9 LPAs must take into account any relevant representations received. It may also wish to discuss with the developer possible modifications to the proposed development to mitigate the concerns raised by particular consultees.

Process: Considerations for the LPA

4.10 Factors to be considered in determination of the prior approval application relating to the appearance of the mast and ancillary apparatus may include materials, colour and design. The use of appropriate materials and colouration may allow a mast to blend more easily into its surroundings. Features of design which an authority may wish to consider include dimensions; overall shape; and whether construction is solid or forms an open framework. They should also consider with the developer the availability of alternative designs which might be more suited to the local environment.

4.11 Factors concerning siting may involve:

- the height of the site in relation to surrounding land;
- the existence of topographical features and natural vegetation;
- the effect on the skyline or horizon;
- the site when observed from any side, including from outside the authority’s own area;

- the site in relation to areas designated for their scenic or conservation value;
- the site in relation to existing masts, structures or buildings, including buildings of a historical or traditional character;
- the site in relation to residential property.

4.12 In considering the siting and appearance of a mast together with its associated development, the scope of landscaping and screening to reduce the impact of the development on its surroundings will be an important consideration.

4.13 Further guidance on siting and design is contained in the Code of Best Practice on Mobile Phone Network Development.

Determination:

4.14 The LPA will have 56 days, beginning with the date on which it receives the application, in which to make and notify its determination on whether prior approval is required to siting and appearance *and* to notify the applicant of its decision to give or refuse such approval. This differs from other prior approval process for Parts 6,7 and 31 also referred to in this annex, for which LPAs have 8 weeks from notification that prior approval is required to grant or refuse that approval.

4.15 There is no power to extend the 56-day period. If no decision is made, or the LPA fails to notify the developer of its decision within the 56 days, permission is deemed to have been granted.

4.16 Accordingly, it may make it difficult for LPAs to use the planning committee in determining prior approval applications, and therefore effective arrangements to delegate decision making to officers should be included in each authorities scheme of delegation.

Determination: When Prior Approval is Not Required

4.17 If the LPA determines that prior approval is not required, the development may proceed:

i. when the operator receives written notice of such a determination; or
ii. after the 56-day determination period has expired.

4.18 The authority should give notice of any determination as soon as possible, rather than allowing the 56-day period to expire without notifying the applicant. The authority therefore needs to devise and use reliable and verifiable means to bring such a notice to the attention of the applicant.

4.19 The development must be carried out in accordance with the details submitted with the application for the determination or as otherwise agreed in writing by the authority.

Determination: When Prior Approval is Required

4.20 If the LPA decide that prior approval is required for the siting and/or appearance of the proposed development, it should give the operator prompt written notice of that determination.

4.21 Following this, the LPA must ensure that the applicant receives its written decision to give or refuse approval before the end of the 56-day determination period.

4.22 Where the LPA notifies the applicant that approval has been within the 56-day period, development may commence upon receipt of that decision. Where the LPA notifies the applicant that prior approval is required but then fails to give or refuse approval within the 56-day period, the development may proceed after that period has expired.

4.23 In both circumstances, the development must be carried out in accordance with the details submitted with the application or as otherwise agreed in writing by the LPA where notification has been provided. Minor amendments to the original prior approved details can be agreed in writing by the LPA under paragraph A.3(8) of Part 24.

4.24 The LPA may refuse approval to siting and/or appearance if it considers that this is justified. The authority must do so by notifying the applicant, within the 56-day determination period, of its decision to refuse approval. Reasons for refusal must be given.

4.25 Where an authority considers that a refusal of approval may be justified, it should first explore with the operator the possibility of modifying the siting and/or appearance of the proposed development. In exercising this power, the LPA should take account of the obligations on code system operators to provide a service, and of technical constraints upon network development.

Notification of Emergency Development

4.26 The prior approval procedure does not apply in respect of emergency development carried out under Part 24 of the GPDO. This allows operators to carry out essential works to maintain or restore telecommunications services without prior approval from the LPA.

4.27 Any Part 24 development carried out in an emergency is subject, under paragraph A.3(11), to the requirement that the operator must give written notice to the LPA of such development as soon as is possible after the emergency begins. It should be noted that the requirement to notify the LPA is separate from the requirement under the Wildlife and Countryside Act 1981 where the Natural Resources Wales (NRW) is notified as soon as possible after emergency development has taken place on an Site of Special Scientific Interest (SSSI).

4.28 Although there is no statutory definition of what would constitute emergency development under Part 24 of the GPDO, the definition of ‘emergency works’ given in paragraph 51(9) of Schedule 3A to the Communications Act 2003 may be helpful as a general guide in the context of development by telecommunications code system operators:

“*emergency works*” means works carried out in order to stop anything already occurring, or to prevent anything imminent from occurring, which is likely to cause—

a) danger to persons or property,
b) the interruption of any service provided by the operator's network, or
c) substantial loss to the operator,

and any other works which it is reasonable (in all the circumstances) to carry out with those works.

4.29 Whether a particular development constitutes emergency development will be determined on the facts of the individual case.

5.0 Demolition of Buildings

Process: Type of development

5.1 Almost all demolition of building operations is development requiring planning permission (see section 3.5 of the Development Management Manual). However, broad permitted development rights are granted by Class A, Part 31 of Schedule 2 to the GPDO for the demolition of any building operation[5] consisting of the demolition of a building.

5.2 The demolition permitted by Class A of Part 31 of the GPDO is conditional upon the developer making a prior approval application to the LPA, as set out in paragraph A.2(b). This application is to enable the LPA to determine, within a 28-day determination period, whether the prior approval of the authority will be required to the method of demolition and any proposed restoration of the site. This provides LPAs with the means to regulate the details of demolition in order to minimise its impact on local amenity.

5.3 These permitted development rights however do not apply where the unsafe/uninhabitable condition of the building is as a result the action or inaction of any person having an interest in the land on which the building stands and it can be made safe by works of repair or works for affording temporary support. A planning application will be required in these circumstances.

[5] As defined in section 55 of the Town and Country Planning Act 1990

5.4 There are two circumstances whereby an application for prior approval is not required. First, where the demolition falls within the definition of "excluded demolition", as defined in paragraph A.3 as:

a) on land which is the subject of a planning permission, for the redevelopment of the land, granted on an application or deemed to be granted under Part III of the Town and Country Planning Act 1990;
b) required or permitted to be carried out by or under any enactment, or
c) required to be carried out by virtue of a relevant obligation.

5.5 Secondly, where demolition is urgently necessary in the interests of safety or health. However, the developer must, as soon as reasonably practicable, give the LPA written justification for the demolition.

5.6 Note that further permitted development rights are also provided in Class B of Part 31 of the GPDO, specifically for any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure. There are no limits or conditions on this permitted development right and the prior approval procedure does not apply.

5.7 Conservation Area Consent is also required for the demolition of most buildings in a conservation area (see section 161(1) of the Historic Environment (Wales) Act 2023).

Process: Validation requirements

5.8 Paragraph A.2(b)(ii) of Part 31 requires that an application to the LPA must be accompanied by[6]:

- A written description of the proposed development;
- A statement that the applicant has displayed a site notice in accordance with A.2(b)(iii) of Part 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended);
- The correct fee.

5.9 Upon submitting the application to the LPA, the applicant must display a site notice on or near the land on which the building to be demolished is sited. The notice must be in place for not less than 21 days of the 28-day determination period, which begins on the date on which the application was submitted to the LPA. The site notice shall contain:

a) the name of the applicant,
b) a description, including the address, of the building or buildings which it is proposed be demolished,
c) a statement that the applicant has applied to LPA for a determination as to whether the prior approval of the authority will be required to the method of demolition and any proposed restoration of the site,
d) the date on which the applicant proposes to carry out the demolition, and

[6] See List 13 in Section 7 Annex: Planning Applications – Lists of Validation Requirements

e) the name and address of the LPA.

5.10 The site notice should be signed and dated by or on behalf of the applicant.

5.11 If the notice is, without any fault or intention of the applicant, removed, obscured or defaced within the-21-day period, then the applicant should be treated as having complied with this requirement. The applicant is, however, expected to take reasonable steps to protect the notice and replace it if it is removed or damaged.

Process: Considerations for the LPA

5.12 LPAs should require prior approval for the method of demolition and any proposed restoration of the site should only where they judge that a specific proposal is likely to have a significant impact on its surroundings. Not all demolition proposals submitted under the prior approval provision will have such an impact.

Determination:

5.13 The LPA has 28 days to decide and notify the applicant if prior approval is required for the method of demolition and any site restoration is required. This period starts from the day after the LPA receives a valid application.

5.14 There is no scope to extend the determination period (i.e. stage one – determination whether prior approval is required), nor should the discretionary stage two (i.e. where prior approval is required, the granting or refusal of that approval) be triggered for irrelevant reasons.

When Prior Approval is Not Required

5.15 If the LPA determines that prior approval is not required, the demolition may proceed:

i. when the developer receives written notice of such a determination; or
ii. after the 28-day determination period has expired.

5.16 The authority should give notice of any determination as soon as possible, rather than allowing the 28-day period to expire without notifying the applicant. The authority therefore needs to devise and use reliable and verifiable means to bring such a notice to the attention of the applicant.

5.17 The development must be carried out in accordance with the details submitted with the application for the determination or as otherwise agreed in writing by the authority.

Determination: When Prior Approval is Required

5.18 If the LPA gives notice within the 28-day determination period that prior approval is required, it will then have eight weeks from the validation of the application to issue its decision, or such longer period as may be agreed in writing (see Article 23 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the DMPWO")).

6.0 Time Limits for Commencement

6.1 In all cases, development must begin:

- Where approval has been given by the LPA, within a period of five years from the date on which approval was given;
- In any other case, within a period of five years from the date on which the LPA received the application.

7.0 Right of Appeal

7.1 There is no right of appeal against the decision of an LPA to require prior approval, i.e. the determination at stage one of the application process (see section 1.2).

7.2 However, under section 78 of the Town and Country Planning Act 1990, applicants have a right of appeal against the LPA's refusal of approval, or is approval subject to conditions with which they disagree, or non-determination of an application made under the prior approval procedure i.e. the decision taken by the LPA at stage two of the application process. Such appeals must be made to Planning and Environment Decisions Wales (PEDW) within six months of the date of the notice of the LPAs decision.

7.3 Prior approval appeals generally follow the same procedures and timetables as appeals relating to ordinary planning permissions. Procedural guidance is available on the Welsh Government website.

7.4 If approval is refused and is upheld on appeal, an applicant may make a fresh application for prior approval determination to the LPA. Any fresh application may include details of different siting and/or appearance. Each individual application must again be considered by the LPA on its individual merits.

7.5 It should be noted that a refusal of prior approval under either procedure does not remove permitted development rights for an individual site. It is simply a refusal of the particular application under consideration.

8.0 Compensation

8.1 No compensation is payable under Section 108 of the Town and Country Planning Act 1990 if an application for prior approval is refused by the planning authority.

9.0 Fees

9.1 An application for a determination as to whether the prior approval of the LPA will be required must be accompanied by the relevant fee. This is currently £100 for prior approvals relating to Parts 6 and 7 of the GPDO and £460 for those relating to Part 24 as set out in The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020, No.745(W.168). Further guidance is in respect of fees is provided in Annex 7- Calculating the fee.

10.0 Application of the Habitats Directive to the Process of Prior Approval

10.1 When considering an application for Prior Approval, the duty in regulation 9(3) of The Conservation of Habitats and Species Regulations 2010 ('the 2010 Regulations'), as amended, means the LPA must have regard to the requirements of the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).

Tests required by the Habitats Directive

10.2 Consideration required of a proposal benefitting from permitted development rights is very similar to that given to a planning application in respect of the Habitats Directive. LPAs need to consider whether:

- Sufficient information has been submitted for them to determine that the proposal satisfies an appropriate Habitats Directive derogation purpose;
- There is no satisfactory alternative to the proposal; and
- The action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

10.3 An 'appropriate derogation purpose' could be one referred to in regulation 53(2)(e) of the 2010 Regulations, which identifies the purposes of preserving public health or public safety or other imperative reasons of overriding public interest. These purposes are the most commonly used to justify derogation from the Directive; however other purposes also exist for which a licence may be granted under the 2010 Regulations.

10.4 Article 1(i) of the Habitats Directive defines "conservation status" of a European species.

10.5 Although an LPA must consider the above tests, it should not duplicate the role of the conservation body. An LPA should only refuse to approve details requiring prior approval where both a criminal offence relating to European protected species (EPS) is likely to result from the development and where a licence from NRW is unlikely to be granted. Where NRW has stated it is satisfied a proposed development can be licensed, the LPA is entitled to rely upon their view.

10.6 The conclusions of the tests, as well as the likelihood of a licence would be granted for the proposal, will then form a material consideration for the LPA when making a decision in respect of prior approval. The LPA will need to demonstrate that officers, or elected members, were aware of their duty and had considered it in making the determination.

Mitigation

10.7 When considering the tests, mitigation measures may need to be submitted and approved by the LPA for the scheme to proceed. Mitigation should only be that required to ensure the operations will not be detrimental to the maintenance of the population of the protected species concerned at a favourable conservation status in their natural range.

The use of conditions

10.8 Where an LPA proposes to grant prior approval, the duty in article 12 of the Habitats Directive to consider EPS is not discharged through:

- conditions requiring surveys of EPS to be undertaken; or
- the use of an 'informative' on the notice informing the applicant of EPS issues or that other approvals may also be required.

What if approval cannot be granted?

10.9 In exceptional circumstances, particularly related to demolition where there arelimited alternatives, it may not be possible to grant prior approval as a result of the Habitats Directive. The applicant will have a right of appeal to the Welsh Ministers should this occur. Should the decision of the LPA be upheld at appeal, this effectively means that the permission granted by the GPDO cannot be implemented. This does not prevent the applicant seeking prior approval for an alternative scheme, or seeking planning permission to undertake works on the site.

Further Guidance

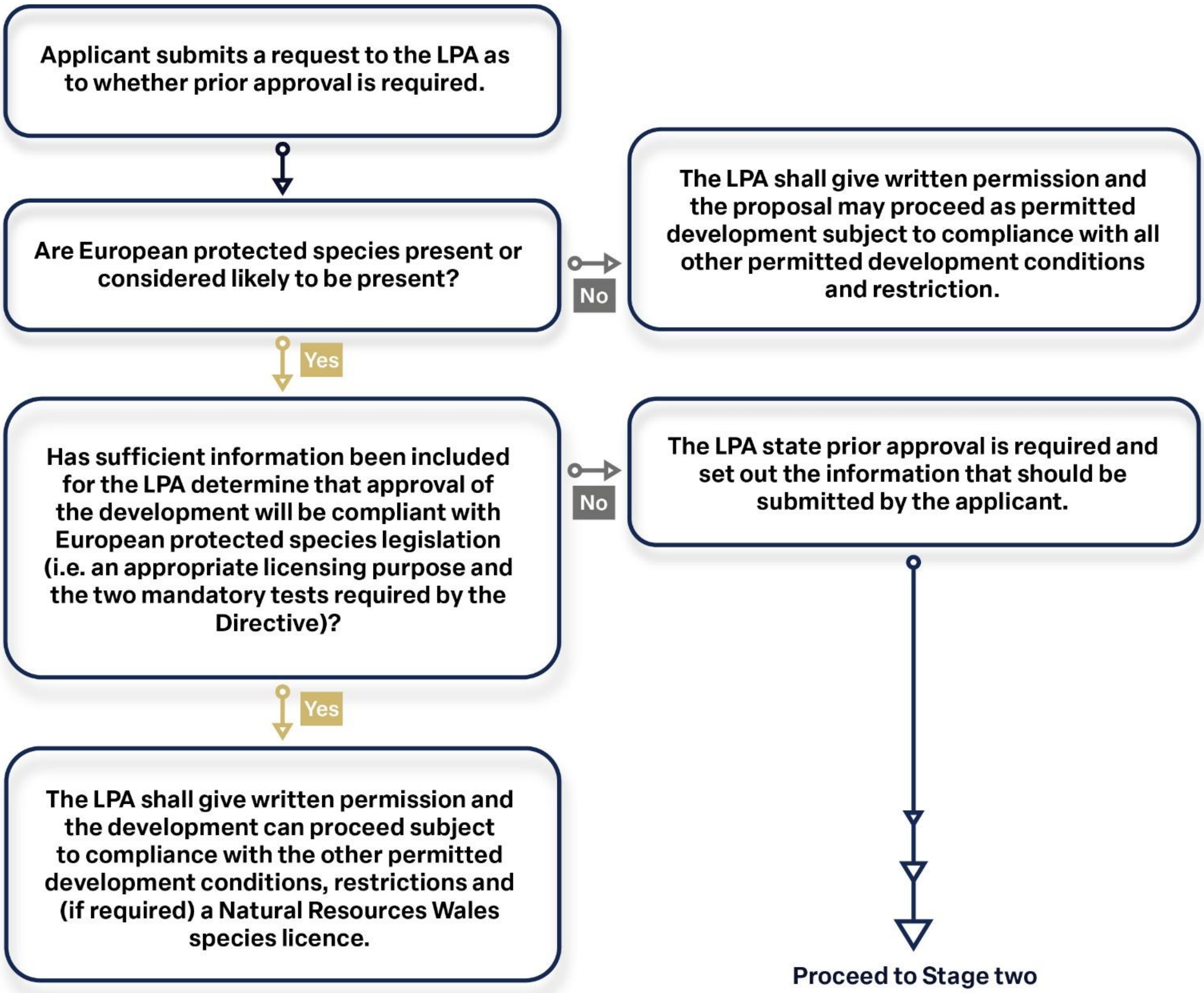
10.10 The European Commission has produced guidance to help interpret EPS legislation 'Guidance document on the strict protection of animal species of Community interest under the Habitats Directive (C(2021)7301).

11.0 Enforcement

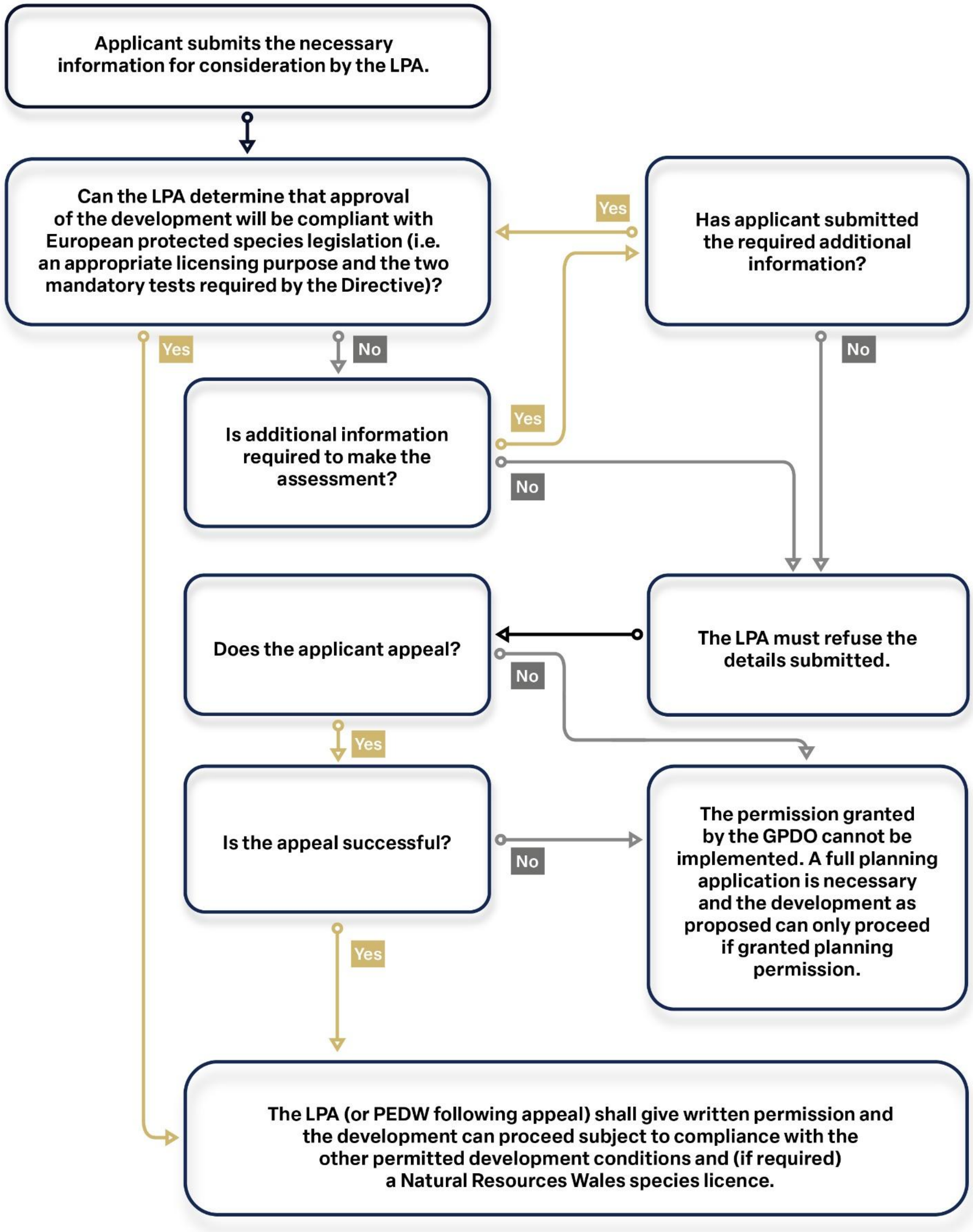
11.1 Development undertaken in breach of the conditions imposed by the GPDO or by the LPA as a result of an application for prior approval, or approval following the requirement for prior approval, may be the subject of enforcement action under the Town and Country Planning Act 1990.

Schedule 1

Stage one



Stage two


Applicant submits the necessary information for consideration by the LPA.
Can the LPA determine that approval of the development will be compliant with European protected species legislation (i.e. an appropriate licensing purpose and the two mandatory tests required by the Directive)?
Yes
No
Has applicant submitted the required additional information?
Yes
No
Is additional information required to make the assessment?
Yes
No
Does the applicant appeal?
The LPA must refuse the details submitted.
No
Yes
Is the appeal successful?
No
The permission granted by the GPDO cannot be implemented. A full planning application is necessary and the development as proposed can only proceed if granted planning permission.
Yes
The LPA (or PEDW following appeal) shall give written permission and the development can proceed subject to compliance with the other permitted development conditions and (if required) a Natural Resources Wales species licence.