Land Rights and Consents for Electricity Network Infrastructure: A Call for Evidence Response

Historic England is the government's statutory adviser on all matters relating to the historic environment in England including the marine planning area. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to respond to the Land Rights and Consents for Electricity Network Infrastructure call for evidence[1].

We are providing comments on questions 26 and 27 only, as they have the most bearing on the historic environment.

Question 26. Do you agree that the Permitted Development Right (PDR) threshold should be changed from 29 to 45 cubic metres in England?

Question 27. Please explain the reasons for your answer.

We recognise that there are occasions where changes may be needed to accommodate increased electricity usage (such as for electric vehicle charging). Where changes are proposed, we consider that there are opportunities to manage that change to ensure that it can be that delivered alongside the conservation of the historic environment, so that they are complementary to each other. We therefore have concerns about the proposed amendment to the PDR as there doesn't appear to have been any consideration of the impacts it would have on the historic environment, particularly on designated heritage assets.

We are concerned with the proposal to increase the PDR threshold from 29 to 45 cubic metres[2] due to potential impacts on the historic environment: such as impacts on protected areas (for example, World Heritage Sites, conservation areas, Registered Battlefields and Parks & Gardens, and National Parks/Landscapes) scheduled monuments, and other designated heritage assets (for example, listed buildings).

Figure 1 of the consultation document (page 22; showing installations of 18.8 and 37.38 cubic metres, both of which are below the 45 cubic metre threshold proposed) indicates that these are substantial, utilitarian structures with the potential to have harmful impacts on surrounding landscapes, streetscapes and townscapes, as well as on designated and undesignated heritage assets including their settings.

The current proposal is to permit the right in National Parks, National Landscapes and the Heritage Coast and, in those areas only, require the prior approval of the local planning

[1] Electricity network infrastructure: consents, land access and rights - GOV.UK

[2] Under Part 15: Class B(a) of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

authority on the siting and appearance of the substation (for substations of 30-45 cubic metres).

However, the PDR is a grant of planning permission, with prior approval being a condition of that permission; so, given the principle of development is established, prior approval offers very limited scope for the decision maker to mitigate any harmful impacts in those areas. It is also noted that the proposed prior approval does not explicitly include consideration of heritage issues, including potential archaeological impacts, impacts on World Heritage Sites and designated heritage assets.

We recognise that the proposal would align the PDR threshold with that in Scotland. However, there is a crucial difference with the equivalent PDR in Scotland, which excludes "certain areas designated for their heritage or scenic value, if it exceeds 29 cubic metres."

The National Planning Policy Framework 2024 (NPPF) states that great weight should be given to the conservation of designated heritage assets, and the more important the asset, the greater the weight should be (para. 212). Para. 189 also states that "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues."

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990[3] requires that "in considering whether to grant planning permission **(**or permission in principle) for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Section 72 of the Act also requires that with respect to conservation areas "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

No assessment appears to have been made in line with these legal duties in the proposal to grant planning permission via changes to permitted development rights.

Furthermore, (when it comes into force) section 102 of the Levelling-up and Regeneration Act 2023[4] requires that the same special regard (as per section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990) is given to the desirability of preserving or enhancing World Heritage Sites, Registered Battlefields and Parks & Gardens (designated under section 8C of the Historic Buildings and Ancient Monuments Act 1953[5]), Scheduled Monuments and Protected Wrecks, or their settings.

As with consideration of sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is unclear whether section 102 of the Levelling-up and Regeneration Act 2023 has been considered in the proposal to grant planning permission via changes to permitted development rights.

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[3] https://www.legislation.gov.uk/ukpga/1990/9/contents
[4] https://www.legislation.gov.uk/ukpga/2023/55
[5] https://www.legislation.gov.uk/ukpga/Eliz2/1-2/49/contents

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Given the potential harmful impacts to those designated heritage assets, and their settings, we do not support changing the threshold for electricity substations in England from 29 to 45 cubic metres; as it would be contrary to planning policy set out in the NPPF and, amongst other things, to sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and section 102 of the Levelling-up and Regeneration Act 2023.

This is not to say that substations should not be permitted in World Heritage sites, etc. However, we recommend that that article 2(3) land is excluded so that impacts can be assessed through the submission of a planning application, enabling proper consideration of the requirements of the NPPF and the relevant planning legislation.

The consultation document presents only anecdotal evidence from utility network owners and operators regarding the extent to which larger installations are required; and that upgrading substation capacity can sometimes result in the installation of a second substation alongside an existing one, and that in some instances a single, larger substation may be less impactful. Either scenario has the potential to have harmful impacts on the historic environment, and the legislative duty and policy requirements to consider impacts on heritage assets should be undertaken when granting permission.

We note that there are currently no restrictions/exemptions for designated heritage assets attached to the existing PDR for electricity substations (under Part 15: Class B(a) of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015[6]); as there are for some other PDRs, such as Part 16: Class A (Electronic communications code operators) which excludes listed buildings and scheduled monuments and has restrictions for article 2(3) land (which includes World Heritage Sites, conservation areas, and National Parks/Landscapes).

Given the potential harmful impacts on designated heritage assets from substations permitted under the existing PDR, we recommend that Part 15: Class B, of the Town and Country Planning (General Permitted Development) (England) Order 2015, is reviewed and appropriate restrictions/exemptions introduced. As a minimum, it should align with those of Part 16: Class A development.

We hope these comments are of value and would be happy to offer further comments if needed.

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[6] https://www.legislation.gov.uk/uksi/2015/596/schedule/2/part/15/crossheading/class-b-electricity-undertakings