

Explanatory Memorandum to The Town and Country Planning (North Wales Border Control Post) (EU Exit) Special Development Order 2023

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Town and Country Planning (North Wales Border Control Post) (EU Exit) Special Development Order 2023. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change

06 March 2023

PART 1

1. Description

- 1.1 This special development order (“the Order”) grants planning permission subject to conditions for the construction and operation of a border control post and the construction and operation of parking for up to 60 heavy goods vehicles (HGVs) at Plot 9, Parc Cybi, Holyhead.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 Section 59(3) of the Town and Country Planning Act 1990 provides that special development orders may be applicable only to such land or descriptions of land as may be specified in the Order.
- 2.2 The Order refers to a map, a copy of which is available for inspection at the Planning Directorate, Welsh Government, Cathays Park, Cardiff, CF10 3NQ, at <https://www.gov.wales/special-development-order-holyhead-border-control-post> and at Isle of Anglesey County Council, Planning and Building Control Department, Council Offices, Llangefni, Anglesey, LL77 7TW.
- 2.3 Plot 9, Parc Cybi, Holyhead is currently used for HGV parking under a temporary planning permission due to expire in November 2023. The Order would allow the retention of some, or all, of the hard surface created for the temporary use.

3. Legislative background

- 3.1 Sections 59(1), (2)(a) and (3)(b), and 60(1) and (2) of the Town and Country Planning Act 1990 give the Welsh Ministers the power to make a special development order that grants planning permission for development specified in the Order or for development of any class specified.
- 3.2 The functions of the Secretary of State under sections 59 and 60(1) were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The entry in Schedule 1 for the Town and Country Planning Act 1990 was inserted by Article 4 of, and Schedule 3 to, the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253). By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 the functions of the National Assembly for Wales were transferred to the Welsh Ministers. Section 59(4) was inserted by section 55 of, and paragraph 5 of Schedule 7 to, the Planning (Wales) Act 2015 and provides that in relation to Wales, references to a development order are to a development order made by the Welsh Ministers.

3.3 The Order is being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The proposed construction and operation of an inland border control post for the Port of Holyhead and additional HGV parking for the town at Plot 9, Parc Cybi require planning permission because it constitutes development as defined by section 55 of the Town and Country Planning Act 1990.

4.2 The Town and Country Planning Act 1990 provides for planning permission to be granted, either directly by a development order, or by means of a development order which grants planning permission on submission of a planning application.

4.3 The Order directly grants planning permission for the development at Parc Cybi subject to conditions, and the order applies exclusively to that site.

4.4 A border control post is required to undertake checks of plant and animal based goods to safeguard biosecurity and food safety. These are known as sanitary and phytosanitary checks (SPS) on European Union (EU) goods under the Official Control Regulations (OCR).

4.5 HGV parking is required to offset a reduction in parking capacity resulting from the closure of the former Roadking truck stop, thereby preventing nuisance caused by indiscriminate parking across Holyhead.

4.6 If the order is not made, the Welsh Government would need to find alternative sites for this development. Without a border control post there is a risk that freight containing sanitary and phytosanitary goods will not be able to continue using the port.

4.7 The Order sets limits on the extent and physical form of border control facilities and HGV parking that can be provided by the Welsh Government and border departments on the land. It also requires the construction and operation of mitigation measures to ensure the development has acceptable planning impacts.

4.8 The legislation affects the traffic using the Port of Holyhead. It also affects the way the Welsh Government and UK Government deliver border control services at the site. The 'envelope' nature of the permission granted by the Order provides flexibility for border control post facilities to be altered in the future without having to apply for planning permission if they remain within the limits set by the consent. These limits are set so that the planning impacts of the development are acceptable, such as the effect on amenity of nearby residents.

5. Consultation

- 5.1 There are no publicity and consultation procedures set out in planning legislation in respect of special development orders. Consultation was undertaken commensurate with what would have been undertaken for a planning application.
- 5.2 Two public consultation exercises have been undertaken by the applicant. The first took place between 24 March 2021 to 13 April 2021, in relation to a border control post at the site. The consultation documents and a summary of the responses are available at <https://www.gov.wales/parc-cybi-border-control-post-special-development-order>. A second consultation was undertaken between 16 November 2022 and 7 December 2022 on the addition of HGV parking.
- 5.3 In addition to the consultation by the applicant's project team, ongoing consultation has been undertaken by Planning Directorate with Isle of Anglesey County Council and Natural Resources Wales to refine the conditions included within the Order.
- 5.4 While a wide range of issues have been raised by consultees, the most significant are issues of noise, lighting and visual impacts on nearby residents. As a result of the concerns, conditions have been included within the Order to mitigate the issues raised.
- 5.5 Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) requires the Welsh Ministers to consult and have regard to the comments of Natural Resources Wales (NRW) in relation to appropriate assessment of a project likely to have significant effects on a protected site, where the project is not directly connected with or necessary to the management of that site. NRW confirmed they agreed with the appropriate assessment that concluded, subject to the implementation of the mitigation measures, that the proposal would not have an adverse effect on any site protected by the regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Introduction

- 6.1 The Welsh Ministers' regulatory impact assessment code for subordinate legislation sets out in what circumstances Welsh Ministers will carry out regulatory impact assessments (RIA). Special development orders do not meet any of the exemption criteria, so RIA has been undertaken. The purpose of RIA, an assessment as to the likely costs and benefits of complying with relevant Welsh subordinate legislation, does not however sit comfortably with this Order. The decision to grant planning permission is not a value for money assessment as some issues such as the devaluation of a person's property cannot legally be taken into account in most planning decisions. Therefore, while this RIA does describe the costs and benefits of the legislation, it is from the perspective of town and country planning legislation and is not intended to provide a business case to decide whether to proceed with the scheme. That will be for the Welsh Government, acting in its developer role, to decide once all statutory consents have been obtained. Planning permission is just one consent. The approval of the Sustainable Drainage Approval Body is another consent required before works can commence.
- 6.2 Planning permission can be granted either directly through a development order or through the use of a planning application, using procedures set by a development order. The Welsh Ministers decided in 2021 to consider this development through a special development order. This gave flexibility, particularly in terms of timing, however it also reflected that the development is of national importance and therefore should be determined by the Welsh Ministers rather than the local planning authority. Since then, work has been undertaken to prepare an informal application for the purpose of considering whether to make a special development order. The application was 'informal' because the Town and Country Planning Act 1990 does not provide a procedure for preparing a special development order. The requirements of the more usual process for submitting an application to a planning authority have therefore been followed as far as possible.

7. Options

- 7.1 There are three options that have been considered:

Option 1: Refuse planning permission and not make a special development order

Option 2: Grant planning permission through a special development order without conditions

Option 3: Grant planning permission through a special development order with conditions

7.2 Option 3 is the favoured option.

8. Costs and benefits

8.1 Analysis of the options has been based on the planning assessment undertaken for applications for planning permission rather than the usual cost and benefit analysis undertaken for legislation. This is because the grant of planning permission through a special development order has the same effect as a decision to grant planning permission in respect of an application submitted in accordance with the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. There are therefore no additional costs for local planning authorities beyond what would usually result from discharging their duties under the Town and Country Planning Act 1990, for example processing applications to discharge planning conditions or pursuing enforcement action.

8.2 The sectors most likely to be affected by the proposals include:

- The Port of Holyhead
- Businesses importing goods of animal and plant origin
- HGV operators
- Local Residents
- Local Planning Authorities (LPAs) – Wales has 25 LPAs who determine applications for planning permission. 22 of these are the unitary authorities, with the national park authorities, who provide their own town planning function, accounting for the remaining 3
- The Welsh Government

8.3 The following cost and benefit analysis has been undertaken for each of the above sectors:

Option 1: Refuse planning permission and not make a special development order

Description

8.4 This option would involve not making a special development order because of a conclusion that the planning impacts of the development at the application site would outweigh its benefits.

8.5 Although this is the 'do nothing' option, there are changes to costs and benefits that will occur if nothing is done. This is because a requirement for physical SPS checks is being introduced and will directly affect port traffic even if the order is not made.

Costs

The Port of Holyhead

- 8.6 The costs for the Port of Holyhead are uncertain. There are two main issues, the extent of freight which is eligible for SPS checks and whether an alternative site for SPS checks can be found.
- 8.7 The extent to which animal and plant-based imports supports the viability of the port business is not known. The range of costs as a result of this option will depend on whether the Welsh Government can find an alternative site, and if it does, what the location of that site means for HGV operators costs. A more remote location from Holyhead and the A55 may increase costs which would make the Port less attractive for animal and plant-based traffic.
- 8.8 If the freight eligible for SPS checks is low as a proportion of business revenue then not finding a conveniently located site would have less financial impact for the Port. If, however, animal and plant-based traffic provides a high proportion of income for the port business, it will be more sensitive to whether an alternative site can be found and the additional cost of that alternative for HGV operators.
- 8.9 Further uncertainty about the extent of cost to the Port arises because it is not known how long it would take to set up temporary arrangements, and the additional cost to HGV operators to do so, while an alternative permanent site is both sought and then constructed.

Businesses importing goods

- 8.10 Not making the order may cause additional costs to businesses importing animal and plant-based goods. The extent of costs to individual businesses will depend on the volume of trade, the additional transport costs of temporary arrangements and the location of an alternative border control post.
- 8.11 It is not possible to quantify business costs or determine whether there are any wider economic impacts at this stage. The cost impact will depend on the location of the business and its customers relative to the Port. Some business may be easily able to reroute their freight to alternative ports, while others may incur a considerable diversion thereby significantly increasing costs. A worse case example would be a food import business in Holyhead having to reroute freight via Liverpool because SPS checks are not available for the Port of Holyhead.

HGV operators

- 8.12 The costs for HGV operators of not making the Order are as described for business importing goods. It is the increased transport costs depending on the location of an alternative border control post. The extent to which

HGV operators would be able to pass additional costs on to their customers depends upon price elasticities and the level of competition in the sector.

8.13 There are two scenarios possible for HGV operators. The first is that they gain additional revenue due to businesses being prepared to pay extra to transport goods to a border control post further away than the current proposal. The second is one of declining revenues where business are unable or unwilling to cover additional transport costs and therefore revenue from the imports of animal and plant-based goods from Ireland declines.

8.14 An additional cost for HGV operators of not making the Order is the availability of HGV parking in Holyhead and the disruption that this causes. The closure of the Roadking truck stop has been offset on a temporary basis by the use of Plot 9, Parc Cybi. Planning permission for HGV parking is temporary until November 2023. The Order would secure the permanent use of the site for up to 60 HGVs. Without the Order being made it would for the local planning authority to determine whether the use can be granted further planning permission. If HGV parking is discontinued beyond November then it would become more difficult for HGV operators to find parking to accommodate drivers rest periods and co-ordinate these with meeting ferry sailing timetables.

Local residents

8.15 There may be indirect costs for residents due to the economic consequences of not making the order as outlined above. The main direct cost would result from indiscriminate HGV parking across Holyhead should the HGV parking at Plot 9 cease beyond November 2023. This cost would be reduced if alternative parking could be found.

Local Planning Authority

8.16 Costs to the local planning authority of no making the order would be confined to those of providing planning advice and undertaking assessment in respect of finding an alternative site.

Welsh Government

8.17 If the Order was not made the Welsh Government would have to decide whether to pursue an alternative site. Having undertaken a site selection search, all detailed design work has been focused on Plot 9 so the cost of finding a new site, undertaking all the necessary environmental surveys and designing the building layouts would be for the whole process. Site selection and design costs to date are £3.2m.

8.18 Site selection and design would take months to undertake. If an SPS border control post is going to be provided to facilitate the continued

transit of animal and plant-based goods through Holyhead then there would be the possible cost of temporary facilities

Benefits

Port of Holyhead

8.19 There are no benefits to the Port of not making the Order.

Businesses importing goods

8.20 There are no benefits to businesses of not making the Order.

HGV operators:

8.21 There may be additional revenue to HGV operators if businesses are prepared to pay the additional transport costs of accessing alternative border control facilities. It may not however be viable to transport the goods the additional distance.

Local residents

8.22 There will not be actual benefit for residents living near the site. The temporary HGV parking will continue until November. This option would however, avoid the issues of noise, vibration, light pollution and visual impact for those residents living closest to the site.

Local Planning Authority

8.23 There is no benefit to the local planning authority from this option.

Welsh Government

8.24 There is no benefit to the Welsh Government from this option.

Option 2: Grant planning permission through a special development order without conditions

Description

8.25 This option would involve making the Order but not including the conditions in the Schedule to the Order.

8.26 The grant of planning permission without conditions is rare. Conditions are required to clearly define the environmental envelope within which the development must keep, to avoid unacceptable planning impacts. It is included as an option, however, to help explain the costs and benefits of the proposed conditions through describing the scenario of them being omitted from the Order.

Costs

The Port of Holyhead

8.27 There would be no additional costs for the Port from making the Order.

Businesses importing goods

8.28 There would be no additional costs for business from making the Order.

HGV operators

8.29 There would be no additional costs for HGV operators from making the Order.

Local residents

8.30 There would be significant environmental costs for local residents from this option, which would decline the further from the site the resident lives. Those residents living close to the site, would likely experience adverse impacts from noise, vibration, light pollution and visual impact both during construction and operation. Without conditions there may be intolerable impacts through the construction period with 24 hour noisy construction activity. Similarly noise from 24 hour HGV movements during operation are likely to affect sleep if not mitigated.

8.31 The impacts on amenity could be lower because the Welsh Government is the developer compared to some commercial developers, however, the potential for significant effects for local residents remains.

8.32 While there may be negative effects on property values of dwellings closest to the site, this is not a material planning consideration so the decision whether or not to grant planning permission cannot take this into account. The effect on the public interest has to be considered in terms of the impact on amenity.

Local Planning Authority

8.33 There would not be additional cost for the local planning authority from this option for their planning function, although their environmental health team may have to investigate more complaints of statutory nuisance.

Welsh Government

8.34 Having planning permission granted without conditions means there are no additional costs to be factored into the project design to pay for mitigation measures. Being able to build a border control post, subject to other statutory consents, would be a financial cost for the Welsh Government to take forward. Whether the build cost is affordable and

value for money is not part of the planning decision and would be for the developer role within Welsh Government to take forward separately.

Benefits

The Port of Holyhead

8.35 The benefit for the Port of making this order without conditions is the relative certainty for business planning that importation of plant and animal-based goods can continue together with the actual revenue receipts this provides.

Businesses importing goods

8.36 The benefit for business importing freight from the Republic of Ireland of making this order without conditions is the relative certainty for business planning that importation of plant and animal-based goods can continue together with the actual revenue receipts this provides.

HGV operators

8.37 The benefit of making this Order is freight transport of plants and animals can continue. It also provides continued secure parking for loads before ferry crossings beyond the expiry of the temporary permission.

Local residents

8.38 A minor benefit for the wider residents of Holyhead is less risk of indiscriminate HGV parking.

Local Planning Authority

8.39 There is limited benefit for the local planning authority in that the development supports the implementation of the development plan but this is significantly eroded by the lack of mitigation measures due to no supporting conditions being imposed. Implementation of the development following making the order means the authority would have less need to intervene to deal with the consequences arising under option 1 (for example, HGV parking).

Welsh Government

8.40 The main benefit for the Welsh Government of making the order with no conditions means building layouts are not constrained, potentially lowering build costs.

Option 3: Grant planning permission through a special development order with conditions

Description

8.41 This option would involve making the order and including conditions that set a development envelope within which development is assessed as being acceptable in planning terms.

Costs

The Port of Holyhead

8.42 There would be no additional costs for the Port from making the Order.

Businesses importing goods

8.43 There would be no additional costs for business from making the Order.

HGV operators

8.44 There would be no additional costs for HGV operators from making the Order.

Local residents

8.45 Unlike option 2, the addition of conditions to the Order will mean, although there will be adverse effects on those living closest to the site, these impacts will be minimised and acceptable in planning terms. Conditions will regulate both construction and operation stages of the development, setting maximum sound, vibration and light levels that the development can emit. Visual impacts will be mitigated through conditions requiring landscaping which will lessen the effect over time.

8.46 As with option 2, any devaluation of dwellings is not a planning material consideration that can be taken into account in the decision on whether to grant planning permission through the Order.

Local Planning Authorities

8.47 Making the Order with conditions will mean the local planning authority has ongoing cost associated with monitoring compliance with conditions. Conditions in the Order also require the developer to seek relevant approvals from the local planning authority, which will have the cost of determination, minus the fee income generated.

Welsh Government

8.48 The costs for the Welsh Government are expected to be higher than Option 2 due to mitigation requirements set by conditions such as acoustic fencing to protect nearby residents from unacceptable noise levels. It has not been possible to separate the cost of meeting the proposed planning conditions from the wider cost of constructing a border control post at the port.

Benefits

The Port of Holyhead

8.49 The benefit for the Port of making this order with conditions is the same as option 2. The relative certainty for business planning that importation of plant and animal-based goods can continue together with the actual revenue receipts this provides.

Businesses importing goods

8.50 The benefit for business importing freight from the Republic of Ireland of making this order with conditions is the relative certainty for business planning that importation of plant and animal-based goods can continue together with the actual revenue receipts this provides.

HGV operators

8.51 The benefit of making this Order is freight transport of plants and animals can continue. It also provides continued secure parking for loads before ferry crossings beyond the expiry of the temporary permission.

Local residents

8.52 As for option 2, there would be a minor benefit for the wider residents of Holyhead of less risk of indiscriminate HGV parking. An additional benefit relative to that of option 2 is that the inclusion of conditions in the Order will help to mitigate any adverse environmental effects.

Local Planning Authorities

8.53 As for option 2, there is limited benefit for the local planning authority in that the development supports the implementation of the development plan. Implementation of the development following making the order (with conditions) means the authority would have less need to intervene to deal with consequences outlined in options 1 and 2.

Welsh Government

8.54 The benefit of this option for the Welsh Government is the benefit of planning permission, provided other statutory consents are also granted, means they can progress to construction.

9. Competition Assessment

9.1 A competition filter test has been applied to the proposed amendments. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh business.

10. Summary of preferred option

10.1 The preferred option is Option 3. Granting planning permission through a special development order with conditions will enable the construction of a border control post at the Port of Holyhead, minimising any disruption to the port and those businesses importing plant and animal-based goods through the port. The inclusion of planning conditions will help to mitigate any potential adverse environmental impacts.

11. Post implementation review

11.1 The local planning authority will be responsible for monitoring compliance with the planning permission in the same way as all other planning permissions.