

ashfords

Leveraging Permitted Development Rights

Understanding the changes to
Permitted Development Rights for
agricultural buildings

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Introduction

1. Conditions attached to Class Q and the recent changes
2. Barns that would likely qualify under Class Q
3. Prior approval procedure and extent to which planning policy can be applied
4. Other issues not to forget in the context of Class Q
5. Questions (will try and answer!)

Background

- Agricultural-to-residential PD rights introduced 6 April 2014 – Class MB
- Government's stated aim of enabling rural businesses to diversify while increasing housing supply
- Covers change of use and building operations

Benefits of PD

- PD rights = grant of national planning permission
- Not dependent on LPA determining application in accordance with relevant local policies
- Simplicity: subject to conditions and the need to obtain prior approval of local planning authority...away you go!



<http://www.planningdesign.co.uk>



<https://www.architectural-services.org>

Condition 1 – Agricultural use

- *The site used solely for an agricultural use as part of an “established agricultural unit”—*
- *on 20th March 2013, or*
- *in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or*
- *in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;*

Condition 1 – Agricultural use

S336(1) TCPA 1990:

“Agricultural” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes

Condition 1 – Agricultural use

Does not include:

- Hobby farming
- Horses
- ✓ kept for working purposes
- ✓ grazing

NOT if fed additional food
or ridden or exercised



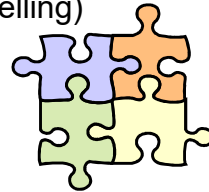
- Lawful use
- Supporting evidence of use (agricultural holding number, evidence of livestock movements, sales, or business records)

Condition 2 – Numbers + floor space

- Pre 6 April 2018: Limit to 450m² existing floor space and 3 dwellings
- Now:
 - large dwellings (i.e. 100m² > 465m²) subject to limits of 465m² existing floor space and 3 dwellings
 - small dwellings (i.e. <100m²) limit to 5 dwellings

Condition 2 – Numbers + floor space

- Permutations:
 - 3 large dwellings, max floor space of 465 m² (e.g. 2 x 120m² and 225m²)
 - 5 small dwellings (5 x 100m²)
 - Combination, subject to total max floor space of 865m² (4 small dwellings + 1 large dwelling) whichever variations you try



Condition 2 – Numbers + floor space

- Unclear if floor limits include first floors introduced as part of conversion
- Doesn't include existing dwellings within the agricultural unit (unless already Class MB / Q dwellings)

Condition 3 – Building Operations

The building operations consist of:

- (i) the installation or replacement of—
(aa) windows, doors, roofs, or exterior walls, or
(bb) water, drainage, electricity, gas or other services,
to the extent reasonably necessary for the building to function as a dwellinghouse”*
- (ii) partial demolition to the extent reasonably necessary to carry out the above building operations*

Condition 3 – Building Operations

- Planning Practical Guidance:

“It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.”

Paragraph: 105 Reference ID: 13-105-20180615

Condition 3 – Building Operations

- Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2)
- Distinction between “conversion” and “rebuilding”

“The building which is the subject of the litigation is a metal framed modern farm building: a metal frame, corrugated sheet and open sided cattle stall. It is largely open on three sides and was, when the Inspector visited, used to house cattle....In order to convert the barn into a dwelling it was contemplated that there would be no demolition and the existing steel frame would be retained in its entirety, as would the roof.”

Condition 3 – Building Operations

Implications of Hibbitt:

- Steel structure / open sided hay barn, even where structure retained, likely refusal
- Stone / brick barns still likely to pass
- Inclusion of structural engineer’s reports with prior approval applications to demonstrate convertibility

Condition 3 – Building Operations



<http://www.planningdesign.co.uk/posts/conversion-of-rural-buildings-under-class-q->

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Other Conditions of Class Q

Not permitted under Class Q if:

- Site occupied under agricultural tenancy, unless consent of both landlord and tenant obtained
- less than 1 year before the date development begins:
 - an agricultural tenancy over the site has been terminated, and
 - the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use

Other Conditions of Class Q

Not permitted under Class Q if:

- Development carried out in agricultural unit under Class A and B of Part 6 (i.e. PD rights for agricultural use)
- Development results in external dimensions of the building extending beyond the external dimensions of the existing building at any given point
- the site is in a conservation area, AONB, national park, world heritage site, etc

Other Conditions of Class Q

Not permitted under Class Q if:

- the site is, or forms part of a site of special scientific interest; a safety hazard area; a military explosives storage area
- the site is, or contains, a scheduled monument
- the building is a listed building (need planning permission and also listed building consent in that case)

Prior Approval

Before beginning development, apply to the LPA for a determination as to whether the prior approval of the authority will be required as to—

- transport and highways impacts of the development,
- noise impacts of the development
- contamination risks on the site
- flooding risks on the site
- whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural to residential use
- the design or external appearance of the building

Application of Planning Policy

- Narrow application, even on limited prior approval grounds
- Just because barn in a location where LPA would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval
- Justifiable reasons for refusal might be:
 - Barn has no road access, power source or other services so conversion is impractical
 - Barn opposite intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals

Prior Approval Application

See Part 3 Class W of the 2015 Order:

- written description of proposed development including building operations where appropriate
- plan or plans showing site location and proposed development
- A statement specifying net increase in dwelling houses, now including no of smaller + larger dwellings proposed
- developer's contact details (address, and email if '*content to receive communication electronically*').
- site specific flood risk assessment in some cases
- requisite fee

Prior Approval Determination

See Part 3 Class W of the 2015 Order.

- LPA may be required to consult with the Highway Authority or the Environment Agency
- May refuse if '*in the opinion of the authority*' there is non compliance with, or insufficient information for the authority to establish compliance with, Part 3 (e.g. whether in agricultural use or not)
- Notification and determination requirements
- Approval may be subject to conditions

Prior Approval Determination

See Part 3 Class W of the 2015 Order.

- Cannot begin development before:
 - confirmation in writing prior approval not required
 - written notice from LPA that prior approval given
 - expiry of 56 days following date application is received by LPA without the LPA notifying whether prior approval is given or refused (i.e. deemed approval)

Prior Approval Determination

- Development must be carried out:
 - where prior approval required, in accordance with details approved by LPA
 - where not required, or where there is no determination within 56 days, in accordance with submitted details.

Prior Approval Determination

- Murrell v Secretary of State for Communities and Local Government [2010]:
- running of time is not dependant on validation or LPA accepting application as valid
- application need not be accompanied by any more than what the relevant order requires (i.e. doesn't have to be on planning portal application form)
- LPA entitled to ask for more information, but not to hold the application invalid until further information received.
- Clock was ticking from date of receipt

Prior Approval Determination

- Receipt of a valid application = runs from payment of fee (Infocus Public Networks Ltd v. SSCLG [2010] EWHC 3309)
- Receipt of notification of LPA within 56 days (not the sending out decision)
- However, must satisfy Class Q conditions, otherwise 'deemed approval' means nothing!

Class Q final points

- Check no article 4 direction in place removing Class Q PD rights.
- Check no planning conditions removing PD rights
- Do not forget CIL!
- Do not rely on a 'deemed' grant of prior approval alone!!

