Southern Planning Practice
Town Planning Consultants

NEW PERMITTED DEVELOPMENT RIGHTS - BARNS TO HOUSES

BACKGROUND

The Coalition Government has been steadily changing the planning system and introducing a three stage approach to development. Those stages being:

- Permitted development
- Prior approval
- Planning applications

First to be changed was the 'temporary extension' of householder permitted development rights and the change of use of offices to housing and change of use of farm buildings to commercial use [30 May 2013] all under prior approval arrangements and now the change of use of agricultural buildings to dwellings, schools and nurseries. This comes into force on 6 April 2014[1]. All the above come with caveats about where and in what instances the 'relaxations' apply. This note should be treated as guidance and is not a statement of the actual procedures.

The prior approval procedure is not about the principle of development, only the detail.

THE CHANGES

1. Class MB. The new provisions bring barn conversions to dwellinghouses (this does not include flats or maisonettes) within the prior approval arrangement without having to go through the full planning application process. The changes allow the change of use of a building and any land within its curtilage from use as an agricultural building to a dwelling house. Building operations that are reasonably necessary to convert such buildings into houses are allowed.

2. Class MA. The other change is to allow barns to be converted to state funded schools and registered nurseries - up to 500m2. This note does not deal with that category.

Various conditions and criteria apply and will need careful consideration.

RESTRICTIONS

The first and most important criterion is that the building needs to have been in use solely for agricultural use as part of an established agricultural unit on 20th March 2013 or if it is not in agricultural use on that date when it was last in such use. This appears to mean that a building that is not being used for a non-agricultural purpose and was vacant but last used for agriculture would qualify. Finally if the building was erected after the 20 March 2013 then it would have to be in agricultural use for ten years before it would qualify for conversion in the future.

[1] Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014

Individually and cumulatively the floor space to be changed must not exceed 450m2. In other words you can't convert a single building larger than 450m2 or convert a group of buildings that cumulatively exceed 450m2

A maximum of three dwellinghouses can be created on the one holding. This is a cumulative number; once three dwellings have been created all further conversions require planning permission.

The external dimensions of the development should not extend beyond the external dimensions of the existing building at any given point. For example this means that a replacement roof should not exceed the eave and ridge heights of the existing building.

Land and buildings subject to an agricultural tenancy require the express consent of both landlord and tenant.

The changes do not allow development consisting of building operations other than the installation or replacement of:

(a) windows, doors, roofs, or exterior walls, or
(b) water, drainage, electricity, gas or other services,

to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations. Caution needs to be exercised if your proposals involve replacement walls and roofs as such works may go beyond 'partial' demolition and would be outside the prior approval regime.

Potential candidates for conversion

It is important to note that the changes make no reference to biodiversity (eg bats and barn owls etc). The implications for biodiversity are covered by other legislation but should not be ignored at the prior approval stage. It would make sense and save problems later to have sites/ buildings checked for protected species.

Prior approval will only apply to the immediate curtilage of the building. The changes do not give freedom to domesticate the countryside with large gardens.

EXCEPTIONS

The changes do not apply to:

Farms and buildings on article 1(5) land - National Parks, AONBs, Conservation Areas, or where the site is or forms part of

(a) a site of special scientific interest;
(b) a safety hazard area;
(c) a military explosives storage area;
(d) or contains a scheduled monument;
(e) the building is a listed building.

Crucially if a prior approval agricultural building has been carried out on the holding since 20th March 2013 then the prior approval regime will not apply to the conversion of another building until ten years have expired. In those circumstances planning permission will be required in the normal way.

Equally crucial is that if a building is converted to a dwellinghouse (or a school) then permitted development to erect extensions to or new agricultural buildings within the agricultural unit will be suspended for ten years. In that period planning permission will be required for extensions to and new agricultural buildings.

NATIONAL PARKS

National Parks (otherwise known and included as Article 1(5) land) are excluded from the changes. However, the Ministerial Statement released on 7th March 2014 states

> *'we expect National Parks and other local planning authorities to take a positive and proactive approach to sustain development, balancing the protection of the landscape with the social and economic wellbeing of the area. National Parks and other protected areas are living communities whose young people and families need access to housing if their communities are to grow and prosper'.*

Thus whilst the prior approval regime does not apply to National Parks there is a strong hint that Government expects National Park Authorities to embrace a positive stance to barn conversions to dwellinghouses within the context that great weight is to be given to conserving landscape and scenic beauty.[2]

Potential candidates for conversion

ADVICE

Like all development proposals care should be exercised in formulating any prior approval application. There are many agents who can advise on the prior approval regime, Southern Planning Practice being one. Key issues to be aware of are:

- Was the building in agricultural use or not in use for a non-agricultural use on 20 March 2013?
- Do any of the exceptions apply?
- What is the 'agricultural unit' and what is meant by the phrase agricultural land occupied as a unit for the purposes of agriculture?
- Are the buildings subject to an agricultural tenancy, has landlord and tenant approval been obtained?

[2] National Planning Policy Framework paragraph 115

- The changes do not allow the conversion to flats or maisonettes.
- Have you erected a prior approval building in the last ten years or since 20 March 2013?
- Carefully consider the proposed residential curtilage, does your proposal fall within the following definition?

  The piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or
  An area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

  Providing a large garden might render your proposal outside the prior approval regime so be careful where the red line is drawn on any application plan.
- Are there any protected species on site or in the building(s)? Consider having them checked by an ecologist and include mitigation and enhancement measures with the prior approval application. This will save time if the planning authority requires submission of such details in order to consider the application and some species surveys can only be done in the summer.
- Are section 106 and Community Infrastructure Levy (CIL) payments required? In short the answer is Yes but this should be limited to those issues in the prior approval regime and ought not to cover affordable housing contributions. However some planning authorities may be meticulous in scrutinising prior approval applications to find reasons why the prior approval regime doesn't apply and a planning application is required. A planning application will require full CIL payments.
- Is the site within 5 or 5.6km of a designated European wildlife site? There is an interesting development that there could be a biodiversity levy charged against prior approval proposals in such cases. New Forest District Council are leading on this and a levy in the order of £3–5,000 may be made and could extend to other Councils.

So get thinking!

PRIOR APPROVAL PROCEDURE

The application to the planning authority is to be accompanied by:

(a) a written description of the proposed development;
(b) a plan indicating the site and showing the proposed development;

(c) the developer's contact address; and
(d) the developer's email address if the developer is content to receive communications electronically;
together with any fee required to be paid.

You would also be well advised to make sure the application has covered the issues the planning authority will look at namely:

- transport and highways impacts of the development,
- noise impacts of the development,
- contamination risks on the site,
- flooding risks on the site, and
- whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order,

The planning authority will consult agencies where necessary. Those consultees have 21 days to respond. The planning authority is required to give publicity of the proposed development by a site notice for 21 days or by serving a notice on any adjoining owner or occupier.

The planning authority can require the developer to submit such information regarding the impacts and risks referred to above and mitigation or details of the operational development as may reasonably be required in order to determine the application. This is where biodiversity issues could arise.

The development cannot be begun before the occurrence of one of the following:

(a) the receipt by the applicant from the planning authority of a written notice of their determination that such prior approval is not required;
(b) the receipt by the applicant from the planning authority of a written notice giving their prior approval; or
(c) the expiry of 56 days following the date on which the application was received by the planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

The planning authority may refuse an application where, in its opinion the proposed development does not comply with or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions as being applicable to the development in question

Prior approvals have a life of three years and if the development is not carried out within three years prior approval will need to be sought again.

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For further advice on this issue please contact:

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