

PLANNING UPDATE: NEW PERMITTED DEVELOPMENT RIGHTS

PERMITTED CHANGE OF USE FROM AGRICULTURAL BUILDING TO RESIDENTIAL DWELLINGS PROPOSED

LIBERALISING THE PLANNING REGIME FOR AGRICULTURAL UNITS

The Government has consulted on new planning powers which will make it easier for agricultural land owners to convert agricultural buildings to dwellings.

The previous position had made it extremely hard for buildings within agricultural units to be converted to dwellings, unless such conversions were subject to ‘agricultural occupancy’ conditions – essentially tying the occupation of the converted dwelling to someone employed on that agricultural unit.

However, in August 2013, the Government issued a consultation paper (“Greater flexibilities for change of use – Consultation”) which, if enacted, will considerably liberalise that accepted current position.

The consultation follows the earlier changes, in force since 30 May 2013, which enable the change of use of agricultural buildings (subject to certain size thresholds and criteria)

THE NEW PROPOSAL

If enacted in their consulted form, the new power will enable a change of use of agricultural buildings within a single agricultural unit to up to three residential dwellings, each of which can be up to 150sqm.

The change of use could either be through conversion of the existing building, or demolition and rebuild within the same footprint.

The change will be available no matter how protected the surrounding landscape is – specifically for instance within green belt, National Parks, conservation areas, and Areas of Outstanding Natural Beauty.

TERMS AND CONDITIONS

There are several checks and balances proposed to ensure that the new power will not lead to extensive and intrusive new residential dwellings within such protected areas.

1. The right is not automatically available. 'Prior Approval' is first required from the local planning authority. The procedure governing such 'Prior Approvals' is set out within previous 2013 planning legislation, but in essence is a slimmed down planning application process. In the case of the new agriculture to dwelling permitted change, there are certain specific matters which need to be addressed by the prior approval process: siting and design (if there are external works required for the conversion, and obviously for rebuild), transport and highways, noise, contamination, and flooding. The impact of the proposed change of use will be assessed against each of those headings. There is an opportunity for the applicant to suggest and offer mitigation if there are identified adverse impacts against any one of those headings (for instance a financial contribution to the improvement of highways in the vicinity).

2. The agricultural building proposed to be converted (or demolished and rebuilt) has to have been physically constructed and existing prior to 20 March 2013 (the date the suggested change was first mooted by the Government). The aim of this requirement is plainly to prevent agricultural unit occupiers from building agricultural buildings pursuant to existing PD rights now, and then claiming to take advantage of the use change to residential. There is little further detail however – including what does 'constructed' mean (completed?), and what if the agricultural building has been demolished since 20 March 2013? We shall have to await the final version of the proposal if and when presented.

3. The three dwelling conversion right applies to a single agricultural unit only. This has an existing definition within this context: "agricultural land which is occupied as a unit for the purposes of agriculture, including any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupied the unit, or any dwelling on that land occupied by a farm worker." Similarly to the building in question, the agricultural unit must have been established at 20 March 2013 (preventing subsequent subdivision taking advantage of the new right). The same three dwelling unit right will apply to an agricultural unit regardless of the unit's size. For landowners who have several 'agricultural units' within their land holding, the right will therefore apply for each unit.

4. There are existing permitted development rights to construct agricultural buildings within a single agricultural unit.

- a. If the three dwelling right has been exercised, new agricultural buildings will only be developable pursuant to the existing permitted development rights 10 years after the residential conversion.
- b. If an agricultural building has been constructed pursuant to the existing permitted development rights subsequent to August 2013 (the date of the consultation), then the residential use conversion will not be available whatsoever.

In either case, planning permission will of course in theory remain obtainable.

A flow diagram attached to this article sets out the procedure and various tests that will apply if the proposals are enacted in their current form.

PROOF OF THE PUDDING

There have been many liberalising actions in relation to the planning system taken by the Government in the last two years. The Treasury's stock argument appears to be that the planning system is a brake on development, and therefore on economic recovery. As with all these changes, there will be a 'bedding-in' period, and the full effect will only be observable some years down the track.

At this stage, and subject of course to the final legislation (if any) which enacts these proposals (expected in April 2014), there may well be a real benefit to agricultural land owners, particularly those with redundant farm buildings on their land. That said, the proposed 'prior approval' process will entail some paper-work, and may not in practice be as simple as a rubber stamp. That will be particularly so where the relevant Council has taken against the new provisions as a matter of principle.

In order to protect the existence of the right if and when it becomes available, existing land owners and agricultural unit occupiers should not from now develop new agricultural buildings pursuant to the existing permitted development rights until they have considered whether or not residential conversion may or may not be possible within existing buildings.

We can advise in further detail on these and the other recent changes.



Oliver Wright - Solicitor
oliver.wright@forsters.co.uk
+44 (0)20 7863 8474

This article offers general guidance only. It reflects the law as at November 2013. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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