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Permitted Development Pitfalls When Converting Agricultural Buildings to Residential Dwellings.

Class Q of the permitted development order allows the conversion of agricultural buildings to dwelling houses, provided a number of criteria are met.

These conditions can be restrictive, and recent case law and appeal decisions have highlighted the difficulties applicants face in seeking to rely on this right.

This article explores the requirements of the legislation, alongside common causes of refusals by the Council, the Planning Inspectorate and the Courts.

Brief summary of the permitted development right

The Town and Country Planning General Permitted Development (England) (Amendment) Order 2018 came into force on 6th April 2018 and amended the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO') which grants deemed planning consent for certain types of development, removing the need to obtain planning permission.

Class Q of the GPDO allows an applicant to:

(a) change the use of an agricultural building to a residential dwelling house (restrictions do apply to the amount of dwelling houses allowed); or

(b) change the use as per (a) above, alongside any building operations reasonably necessary to convert the building to a dwelling house.

In particular, the permitted development right allows the conversion of the agricultural building into:

- up to five small houses with a maximum square meterage of 100;
- up to three larger houses with a maximum square meterage of 465; or
- a combination of both of the above up to a maximum of 5 houses (with no more than 3 being 465 square metres).

On the face of it, this appears positive for rural communities, who would benefit financially and socially from the new housing, without the need to battle through the planning process. However, there are a number of restrictions and conditions to comply with, which have caused difficulties along the way. We have explored this in more detail below.

Summary of conditions to comply with to benefit from the permitted development right

The GPDO sets out that development is not permitted where:

(a) The site was not 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;

(b) The restrictions in relation to the size and amount of the housing as set out above must be complied with;
(c) The site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant are obtained or less than a year before the date the 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 the express consent of both the landlord and the tenant has been obtained);
(d) Permitted development under class A(a) and class B (b) of part 6 of the GPDO (in relation to agricultural buildings and operations) has been carried out on the established agricultural unit since 20th March 2013, or where development under class Q begins after 20th March 2023 during the period which is ten years before the date development under class Q begins;
(e) The development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any point;
(f) The development would consist of building operations other than the installation or replacement of windows, doors, roofs, exterior walls, water drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house, and partial demolition to the extent reasonably necessary to carry out the building operations;
(g) The property is on Article 2 (3) land, which includes national parks, areas of outstanding natural beauty, world heritages parks and conservation areas;
(h) The site is and forms part of a site of specific scientific interest, a safety hazard area or a military explosives storage area; or
(i) The site contains a scheduled monument or the building is a listed building.

Further, where the applicant wishes to obtain class Q (a) development alongside class Q (b) development, (i.e. the change of use alongside the building works), they must first apply to the Council for a determination as to whether the Council's prior approval is required in respect of the following:

a) transport and highways impacts;
b) noise impacts;
c) contamination risks on the site,
d) flooding risks on the site,
e) whether the location or siting of the building makes it impractical or undesirable for the building to be converted from agricultural to residential use; or
f) the design or external appearance of the building.

If the application is purely for the change of use under class Q(a), then the applicant must still apply to the Council to determine whether prior approval is required in respect of (a) to (e) above.

Common problems in satisfying the criteria in the GPDO

One of the most common issues that applicants face is satisfying that the works would only amount to a conversion rather than a complete rebuild.

The case of *Hibbitt and another v Secretary of State for Communities and Local Government and another [2016] EWHC 2853 (Admin)* highlights the difficulties in satisfying this initial criteria. In this case, the barn would have retained the existing steel frame and roof, but structural infill panels were required to construct the four external walls and the ceiling.

The Council refused the proposed development as they stated it was not permitted development, and on appeal, the Planning Inspector agreed with the Council. This was on the basis that the permitted development right does not allow a complete rebuild of the building and the works went "well beyond what could reasonably be described as conversion". The applicant appealed to the High Court.

The High Court dismissed the application and declined to quash the Inspector's decision. The Court held that the development was not a conversion, and clarified that if a development does not amount to a conversion then it falls at the first hurdle and cannot be classified as permitted development. However, the Court further held that there was no need for 'convert' to be defined in the GPDO, as each case would be assessed on its merits.

Further issues that applicants have faced are where the development would involve the creation of new structural elements. A number of applications have previously been refused for developments involved structural works to walls, upper floor or internal walls. The Previous Planning Practice Guidance ('PPG') stated that "*it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right".*

This has previously meant that a number of cases were refused permission by the Council and rejected on appeal to the Planning Inspectorate where the existing building was not strong enough to take the additional loading without further structural support. An appeal in Devon for the change of use of an agricultural building to one dwelling house in 2016 confirmed that the Planning Inspectorate attached significant weight to the PPG as the appeal was rejected on the basis that the existing timber structures were not proven to be sufficient to support the new panels and new roof without further structural support.

However, the PPG was updated in June 2018 to delete the above reference to structural elements and amend the guidance so that it states:

"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.

Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q".

Therefore there is no longer a test requiring the building to be structurally sound, and the only test is whether the building is suitable for conversion. In particular, the PPG confirms that internal walls, a floor, mezzanine or upper floors are allowed under Class Q.

Whilst each case will be decided on its own merits, only time will tell whether this change in the guidance will have a significant impact on the way that Councils assess the criteria to be complied with under the GPDO.

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