

July 2012

PLANNING CONTROL OVER AGRICULTURAL LAND AND BUILDINGS

The General Rules

1. The use of land, and of buildings occupied therewith, for agriculture is not development and does not therefore need specific planning permission (section 55(2)(e) of the Town and Country Planning Act 1990). 'Agriculture' includes the use of land for allotments (decided in *Crowborough Parish Council v Secretary of State for the Environment and Wealden DC* [1980] 43 P & CR 229).
2. The erection of buildings, or similar operations, on agricultural land is development and (subject to the exemptions noted below) requires specific planning permission – s.55 and s.57 of the Town and Country Planning Act 1990 (the 1990 Act) refers. Similarly, a change of use of agricultural land or buildings to a non-agricultural purpose is development requiring planning permission.

The Exemptions

3. The following agricultural buildings, works and uses are permitted development by virtue of Part 6 of schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended by the Town and Country Planning (General Permitted Development)(Amendment) Order 1997): -

(C) Class A – Development on units of 5 hectares or more

(D) Permitted development

4. The erection, extension or alteration of a building, or the carrying out of any excavation or engineering operation on agricultural land comprising an agricultural unit (i.e. a farm) of 5 hectares or more, which is reasonably necessary for agricultural purposes within that unit.

Development is not within the Class if:

- a) it would be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare in area;
- b) it would consist of, or include the erection extension or alteration of a dwelling;
- c) it would involve the provision of a non-agricultural building, structure or work on the land;
- d) the ground area covered by:
 - i. any work or structure (other than a fence) for accommodating livestock (defined in paragraph 22 below), plant or machinery exceeds 465 square metres; or
 - ii. existing building, work or structure (other than a dwelling) erected on the same unit within the proceeding two years and wholly or partly within 90 metres of the proposed development) exceeds 465 square metres;
- e) the height of any part of any building structure or works within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres;
- f) the height of any part of any building etc. not within 3 kilometres of the perimeter of an aerodrome would exceed 12 meters;
- g) any part of the development is within 25 metres of a metalled part of a trunk or classified road;
- h) it would consist of or include the erection, construction of or the carrying out of works to a building, structure or excavation for the accommodation of livestock (defined in paragraph 18 below) or for the storage of slurry or sewage sludge, and the building etc. is or would be within 400 metres of the curtilage of a protected building (i.e. a building normally occupied by people, but excluding a building within the agricultural unit, certain industrial buildings and a dwelling or other building on another agricultural unit used for agricultural purposes);
- i) it would involve excavations or engineering operations on or over Article 1(6) land (defined in paragraph 19 below) which are connected with fish farming.

5. The following condition apply to any development within Class A:

- a) where the development is carried out within 400 metres of a protected building (see paragraph 4h above for the definition), any building, structure or other works shall not be used to accommodate livestock (defined in paragraph 22 below) or to store slurry or sewage sludge within 5 years from the carrying out of the development;

- b) where development involves the extraction of minerals from the land or from a disused railway embankment on the land, or the removal of mineral from a mineral-working deposit on the land, the mineral shall not be moved off the land unless specific planning permission has been obtained;
- c) in the case of development involving the deposit of waste materials on or under the land, no waste materials shall be brought onto the land from elsewhere except for a development within Class A (a) or to create a hard surface, where the materials are incorporated into the building or works forthwith.

6. Development consisting of:

- a) the erection, extension or alteration of a building;
- b) the formation or alteration of a private way;
- c) the carrying out of excavations or the deposit of waste material on land which exceeds 0.5 hectare in area; or
- d) the placing or assembly of a tank in any waters, is permitted by this Class subject to the following conditions: -
 - i. the developer shall, before that start of the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting or appearance of the tank, as the case may be;
 - ii. the application shall be accompanied by a written description of the proposed development and of the materials to be used and a plan indicating the site, together with any fee required to be paid;
 - iii. the development shall not be begun before the occurrence of one of the following:
 - the receipt by the applicant from the LPA of a written notice of their determination that such prior approval is not required;
 - where the LPA give the application notice within 28 days following the date of receiving his application of their determination that such prior approval is required, the giving of such approval; or
 - the expiry of 28 days following the date on which the application was received by the LPA without the LPA making any determination as to whether such approval is required or notifying the applicant of their determination;

- iv. where the local planning authority give the applicant notice that such prior approval is required the applicant shall display on site notice... leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant.
- v. where the site notice is without fault or intention of the applicant removed etc. before the period of 21 days (above) has elapsed he shall be treated as having complied with requirements if he has taken reasonable steps for protection of the notice and its replacement if necessary.
- vi. the development shall, except to the extent that the LPA otherwise agrees in writing, be carried out:
 - where prior approval is required, in accordance with the details approved;
 - where prior approval is not required, in accordance with the details submitted with the application;

vii. the development shall be carried out:

- where approval has been given by the LPA, within 5 years from the date on which the approval is given;
- in any other case, within 5 years from the date on which the LPA was given the information referred to in (ii) above.

7. The conditions set out in paragraph 6(d)(i) – (vii) above do not apply to the extension or alteration of a building if the building is not on Article 1(6) land (defined in paragraph 23 below) except in the case of significant alteration or extension.

8. Development consisting of the significant extension or alteration of a building (as defined in the preceding paragraph) may be carried out once by virtue of Class A(a).

9. Where development consists of works for the erection, significant extension or significant alteration of a building and;

a) the use of the building or extension for the purposes of agriculture within the unit permanently ceases within ten years from the date on which the development was substantially completed; and

- b) planning permission has not been granted on an application, or has not been deemed to be granted under Part III of the 1990 Act, for development for purposes other than agriculture, within three years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased, then, unless the local planning authority have otherwise agreed in writing, the building or, in the case of development consisting of an extension, the extension, shall be removed from the land and the land shall, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing between the local planning authority and the developer.
10. Where an appeal has been made, under the 1990 Act, in relation to an application for development described in paragraph 9(b), within the period described in that paragraph, that period shall be extended until the appeal is finally determined or withdrawn.
11. Where development is permitted by Class A(a), the developer shall notify the local planning authority, in writing and within 7 days, of the date on which the development was substantially completed

(E) Class B – Development on units of less than 5 hectares

B. Permitted development

12. The carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 hectares and less than 5 hectares in area of development consisting of: -
- a) the extension or alteration of an agricultural building;
 - b) the installation of additional or replacement machinery;
 - c) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus;
 - d) the provision, rearrangement or replacement of a private right of way;
 - e) the creation of a hard surface;
 - f) the deposit of waste; or
 - g) the carrying out of any of the following operations in connection with fish farming: repairing ponds and raceways, the installation of grading machinery aeration equipment or flow metres and any associated channel, the dredging of ponds, and

the replacement of tanks and nets; where the development is reasonably necessary for the purposes of agriculture within the unit.

13. Development is **not** permitted within Class B if:

- a) the development would be carried out on a separate parcel of land within the unit which is less than 0.4 ha;
- b) the external appearance of the premises would be materially affected;
- c) any part of the development would be within 25 meters of a metalled part of a trunk road or classified road;
- d) it would consist of, or involve, the carrying out of any works to a building or structure used or to be used for the accommodation of livestock or the storage of slurry or sewage sludge where the building or structure is within 400 metres of the cartilage of a protected building; or
- e) it would relate to fish farming and would involve the placing or assembly of a tank on land or in any waters or the construction of a pond in which fish may be kept or an increase (otherwise than by the removal of silt) in the size of any tank or pond in which fish may be kept.

14. Development is **not** permitted by Class B(a) if :

- i. the height of any buildings would be increased;
- ii. the cubic content of the original building would be increased by more than 10%;
- iii. any part of any new building would be more than 30 metres from the original building;
- iv. the development would involve the extension, alteration or provision of a dwelling;
- v. any part of the development would be carried out within 5 metres of any boundary of the unit; or
- vi. the ground area of any building extended by virtue of Class B(a) would exceed 465 square metres (calculated as described in paragraph 4d above).

15. Development is **not** permitted by Class B(b) if:

- i. the height of any additional plant or machinery within 3 kilometres of the perimeter of an aerodrome would exceed 3 metres, or elsewhere would exceed 12 metres;
- ii. the height of any replacement plant or machinery would exceed that of plant or machinery being replaced; or

- iii. the area to be covered by the development would exceed 465 square metres (see paragraph 4d above).
16. Development is **not** permitted by Class B(e) if the area to be covered by the development would exceed 465 square metres (see paragraph 4d above).
 17. Development permitted by Class B is subject to the following conditions:
 - i. if carried out within 400 metres of a protected building (defined in paragraph 4h above), any building altered or extended, or any works resulting from the development, shall not be used to accommodate livestock (defined in paragraph 22 below) save in specified circumstances of emergency or quarantine, or for the storage of slurry or sewage sludge;
 - ii. in the case of development consisting of the alteration or extension of a building situated on article 1(6) land (defined in paragraph 23 below) or the provision, rearrangement or replacement of a private way on such land the conditions set out in paragraph 6(d) (i-vii) above.
 18. Development is permitted by Class B(f) subject to the following conditions:
 - i. the waste materials are not brought to the land from elsewhere unless used forthwith for works falling within Class B(a), (d) or (e);
 - ii. the height of the surface of the land will not be materially increased by the deposit.
 19. Development is permitted by Class B(a) subject to the following conditions:
 - a) Where development consists of works for the significant extension or significant alteration of a building and;
 - the use of the building or extension for the purposes of agriculture within the unit permanently ceases within ten years from the date on which the development was substantially completed; and
 - planning permission has not been granted on an application, or has not been deemed to be granted under Part III of the Act, for development for purposes other than agriculture, within three years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased, then, unless the local planning authority have otherwise agreed in writing, the extension, in the case of development consisting of an extension, shall be

removed from the land and the land shall, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing between the local planning authority and the developer.

- b) Where an appeal has been made, under the 1990 Act, in relation to an application for development described in paragraph B8(a)(ii), within the period described in that paragraph, that period shall be extended until the appeal is finally determined or withdrawn.
- c) The developer shall notify the local planning authority in writing and within 7 days, of the date on which the development was substantially completed.

(C) Class C – mineral workings for agricultural purposes

C. Permitted development

- 20. The winning or working on land held or occupied with land used for the purpose of agriculture within the agricultural unit of which it forms part. Development is not within the Class C if it is within 25 metres of metalled portion of a trunk or classified road.
- 21. Development within the Class is subject to the condition that any minerals extracted shall not be moved to a place outside the land from which it is taken, except to other land used for agricultural purposes.

Definitions

- 22. ‘Livestock’ includes fish or shellfish which are farmed.
- 23. ‘Article 1(6) land’ is land within a National Park and adjoining land and the Broads.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
63	Planning and Building Enforcement	Sets out details of the planning and appeals procedures.
83	Neighbourhood Planning	Sets out the procedure for obtaining a Neighbourhood Development Plan or Neighbourhood Development Order.