Planning Update

Date: 2 September 2014
CLA Briefing Note Reference: PO05/14

(A) Permitted Development Rights - Class MB – change of use of agricultural buildings to dwellings

Many members are using the new Class MB rights to change the use of farm buildings to dwellings with varying degrees of success and failure. Some planning authorities are, where they can, delivering approvals. Many planning authorities are interpreting the Class MB regulations differently and dozens of refusals are resulting. Given the level of frustration experienced by members and their agents, the CLA pulled together around 11 different problem areas (set out below) and sent them to the Housing and Planning Minister, Brandon Lewis, at Communities and Local Government (CLG). This letter was sent in August 2014 and, at the time of writing this update, we await a response.

1. LPA refusing to "validate" and "register" prior approval applications

(i) One LPA told an applicant (in July 2014) that they did not know anything at all about new permitted development rights for the conversion of farm buildings to dwellings and told them to submit a full planning application for change of use;

(ii) LPA refusing to "register" or "validate" prior approval applications – But Paragraph N (SI 2013 1101 recently amended by SI 2014 564) makes no reference to "registering" or "validating" prior approval applications. Rather Paragraph N 9(c) only refers to receipt of the application by the planning authority when it says "the expiry of 56 days following the date on which the application was received by the local planning authority.....";

(iii) LPA refusing to "register" a prior approval application until a unilateral undertaking was signed and a payment made for local bird protection on a RAMSAR site some 10km from the site of the barn conversion – but the regulations do not provide a basis for making any such demand;

(iv) LPA refusing to "validate" or "register" a prior approval application for conversion of a barn to a dwelling on the grounds that there are already three dwellings on the agricultural holding;

CLA comment - the LPAs in question are attempting to interpret para MB1(c) to mean that existing dwellings (including holiday cottages in one instance) should be counted. It appears LPAs are seeking to widen the meaning of Class MB; indeed we have included as an annex the legal advice provided by an LPA solicitor to a planning officer on this matter. The CLA has advised its members that the regulations do not take into account what has happened in the past on the farm and we have referred planning authorities several times to the Explanatory Memorandum to SI 2014 564 paragraph 7.4 which says in the first sentence "*Under new Class*

MB agricultural buildings will be able to change to up to three dwellinghouses (C3)....." and in the final sentence "*Up to 450 square metres of agricultural building will be able to change to residential use for up to three dwellings*".

We had assumed that this Explanatory Memorandum set out a clear statement of the Government's intentions in this matter.

2. Prior approval refusals - Location

(v) "Location with limited access to services except via private vehicle"

(vi) "The proposal would be undesirable due to unacceptably isolated location resulting in unsustainable residential development in open countryside for which there is no special justification"

CLA comment – with regard to (vi) and (vii) above, Class MB makes clear that one of the matters on which prior approval is required is on the transport and highways impacts of the development. Paragraph N (SI2013 1101 as amended by SI2014 564) and the Explanatory Memorandum that accompanies SI2014 564 clearly state that planning authorities "must only consider the National Planning Policy Framework (NPPF) to the extent that it is relevant to the matter on which prior approval is sought". The NPPF sets out at paragraphs 29 "...that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas." This statement is reinforced in NPPF paragraph 34. Lastly, there is no mention in Class MB and paragraph N about there needing to be a "special justification".

(vii) "The remote siting of the buildings away from basic services and facilities and accessibility by public transport is such that their conversion to 3 no. dwellings would be unsustainable, contrary to polices xx and yy of the adopted zz Local Plan (2005) and the guidance contained in the National Planning Policy Framework"

CLA comment – The LPA advised this CLA member that the prior approval application would be refused unless a financial contribution was made towards affordable housing provision. Given that the Class MB regulations make no mention of payments for affordable housing the CLA member refused to accede to this request and the prior approval was refused.
On reading the planning officer's report about the location of the building to be converted, it states that the "buildings sit to the north of a traditional red brick and tile farmhouse" which does not in our opinion constitute remote.

(viii) Reason for refusal - "The proposed development does not comprise permitted development under parts Schedule 2, Part 3, Class MB, of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014. This is because the development does not satisfy condition MB.2(1) Class MB(a)(e) as the site is located in a rural location remote from community services and essential support facilities, and is inaccessible by a range of transport modes. This would represent an unsustainable form of development which makes the location impractical for a change of use to a Class C3 (dwelling house) use of the Schedule to the Use Classes Order."

CLA comment – This barn conversion to a dwelling is to house a gamekeeper on an estate. By definition, dwellings for game keepers, and farm workers etc, will generally be located in remote rural locations.

(ix) "The proposal would be contrary to the National Planning Policy Framework paragraph 55"
CLA comment - We have seen several refusals quoting the above. But NPPF paragraph 55 concerns isolated dwellings in rural areas. Paragraph N (SI2013 1101 as amended by SI2014 564) and the Explanatory Memorandum that accompanies SI2014 564 clearly state that planning authorities "must only consider the National Planning Policy Framework (NPPF) to the extent that it is relevant to the matter on which prior approval is sought". Class MB enshrines in regulations the ability to convert a farm building to a dwelling, so in our opinion, NPPF paragraph 55 is irrelevant. It certainly is not mentioned as being a reason for which prior approval is required.

(x) "The domestic occupation of the building would have an undesirable relationship with the existing agricultural activity alongside in storage barns and handling areas"

CLA comment - One would have some sympathy with this statement if the dwelling were to be bought by someone completely unconnected to the farming business. However, the barn conversion in question is to be occupied by a family farming member who will be fully aware of the environment in which they will choose to live and this was pointed out several times to the LPA in question;

(xi) ".....Again part MB only applies to the re-use of convertible existing buildings and does not apply in respect of building operations required to convert the subject barn."

CLA comment - The regulations do not say that Class MB "only applies to re-use" and "does not apply in respect of building operations". The Class MB permits the conversion of a farm building to residential use and allows buildings operations that are "reasonably necessary..."

3. Late arrival of LPA determinations on prior approvals

A number of planning authorities are missing the 56 day determination period (56 days after of the date of receipt). The CLA is advising its members that the 56 day determination period is an absolute even if the LPA has requested further information which has been provided by the applicant. Therefore in theory if the 56 days (after date of receipt of the prior approval application) has expired without the LPA notifying the applicant as to whether prior approval is granted or refused, then the development can commence in line with the submitted plans is what we are advising our members.

From the evidence set out above, it is clear to us that interpretation of the Class MB regulations by a number of LPAs is undermining the Government's stated intention of providing new housing in rural areas.

Many Class MB prior approval refusals are heading to appeal.

Since sending the above to the Minister, we are now starting to hear about planning authority's demanding that the red line around the proposed development should also include the access to the road. However, the track/driveway does not form part of the curtilage area allowed under Class MB. Another one to take to officials and the Minister.

(B) Yorkshire Dales National Park Authority (YDNPA) Article 4 Direction

There is still no news on whether the Secretary of State (SoS) is going to take any action about the YDNPA Article 4 Direction to remove permitted development rights (PDR) for Class M (change of use of farm buildings to a range of commercial uses). If the SoS does not cancel the blanket Article 4 Direction, the direction comes into force in January 2015. The CLA North office has been encouraged to alert members in the Park to ensure they act well in advance of this date if they want to convert farm buildings to commercial uses.

Interestingly, the SoS continues to alter or cancel Article 4 Directions made by a couple of London Boroughs who want to remove PDR for change of use of offices to dwellings. One London Borough is threatening to take the matter to the High Court.

These London-based Article 4 directions fly in the face of stated government intentions, so does the YDNPA Article 4 Direction, which we have constantly reminded government about.

(C) Communities and Local Government – Technical Consultation on Planning

Communities and Local Government (CLG) published the Technical consultation on planning in July. It contains 80 questions ranging across 6 subject areas to "further improve the planning system". The deadline for responding to this consultation is 26 September, 2014.
https://www.gov.uk/government/consultations/technical-consultation-on-planning

A summary of the consultation and proposed CLA response are set out below:

Section 1 Neighbourhood Planning (NP) proposes to streamline and simplify the process. The CLA response has been largely supportive. We have made suggestions for further improvement (qu 1.7, 1.10, 1.11).

Section 2 Further changes to permitted development rights (PDR) proposes further expansion of PDR. These include change of use of industrial, storage and some sui generis uses to residential, PDR for commercial filming (Q2.17), large solar panels on non-domestic buildings (Q2.18) and extensions to homes and offices. There are also proposals for Article 4 Directions (Q2.24), and fee amendments in relation to the above. The CLA has largely supported the proposals. We have voiced a strong objection to the Government's obsession with excluding listed buildings and Article 1(5) land throughout. We commented further on the proposed changes to solar PV PDR on non-domestic buildings at Q2.18 which could have unintended consequences. We have also raised the issue of consolidation of the General Permitted Development Order 1995.

Section 3 Planning conditions and discharge - proposes improvements to the use of planning conditions and a new process for deemed discharge of planning conditions. The CLA supports all these proposals albeit we are suggesting a shortening of proposed timings for the deemed discharge proposals and the fee refund. We have also requested that the sharing of draft conditions by LPA with applicants should apply to rural economic development, not just to major development.

Section 4 Statutory Consultees- focuses on improving engagement with statutory consultees so they are consulted in a proportionate way on developments where their input is especially required. The CLA has pointed out that many CLA members would value pre-application advice from statutory consultees and planning authorities, and are still finding it difficult to obtain. The CLA response expresses its disappointment that the government has not brought forward its proposals for a statutory requirement to have a local plan in place.

Section 5 Environmental Impact Assessment (EIA) - outlines proposals to raise the EIA screening thresholds for industrial estate and urban development projects. The CLA's response at Q5.3 requests that consideration be given to changing the screening threshold for the hub height of a single wind turbine from "exceeding 15 metres" to "exceeding 40 metres".

Section 6 Nationally Significant Infrastructure Planning (NSIP) regime - sets out proposals for improvements to the NSIP regime by amending regulations for making changes to Development Consent Orders. The CLA is not responding to this section.

The CLA's final response, which will be discussed at a forthcoming CLA Business and Rural Economy Committee meeting, will be published on the CLA Planning webpage on 26 September 2014.

(D) On-farm reservoirs – meeting with DEFRA and CLG

The Chief Land Use Policy Adviser has persuaded the DEFRA Water Availability and Quality team to offer the CLA a meeting with them and CLG officials that will focus on the concerns repeatedly raised by CLA members about the difficulties in obtaining planning permission for the construction of on-farm winter-fill reservoirs. The focus of the meeting will be about determining what are the main issues and delivering better "factual guidance" to both applicants and planning authorities.

From responses received so far from around the country, the CLA East region is the most affected by this problem.

The CLA will take its own proposals for better permitted development rights for on-farm reservoirs to the meeting.

(E) Minerals and Waste planning policy – meeting with CLG

The Planning and Renewable Energy Advisers are meeting the CLG Minerals and Waste Planning Policy Team Leader on 2 October. The aim of the meeting is to meet the new Team Leader and discuss planning policy on shale gas and fracking. However there are a number of other issues that we will also raise which are as follows:

- On-farm reservoirs
- On-farm AD plants
- Minerals – reinstatement of twice-yearly CLA Minerals Working Group/CLG meetings

(F) Local Plan progress

Of 336 local authorities across England, around 109 local plans have been examined or submitted for examination (by the Planning Inspectorate) since the NPPF came into effect in April 2012, of these around 40 (12%) have been found sound. In fact only 13% of local authorities had adopted a local plan which complies with the NPPF. This suggests that many local authorities have adopted plans in place that are out of date against the NPPF. Furthermore, the progress in preparing NPPF-compliant local plans is slowing as increasing numbers (around half) are sent back to councils for modifications before they will be approved. More than half of councils nationwide have yet to formally publish a local plan since the NPPF was introduced – a state of affairs that we continually raise with officials as many of these are rural authorities with consequential impacts on the delivery of rural economic development.

(G) Community Infrastructure Levy and Section 106 Obligations

According to research undertaken by Savills Research for the Home Builders Federation around 67% of local planning authorities (LPAs) will not have a CIL in place by April 2015 when the rules change to restrict LPAs pooling s106 contributions. To put this in context, since the introduction of CIL, 58 LPAs (out of 338) have been through the CIL examination process and had an Examiner's report published. 50% of these have seen a reduction in either their maximum residential or retail rate during the CIL process.

LPAs are taking up to two years to implement a CIL charging schedule. With less around eight months to go, only those LPAs that have submitted a Charging Schedule for Examination are likely to make the deadline, but even then implementation on the ground can still take another nine months.

The majority of LPAs will be reliant on section 106 contributions to fund infrastructure but restrictions already in place will severely curtail their ability to use s106 as a mechanism for funding strategic, or non-site specific, infrastructure. Clearly further guidance will be required

This research was published after the Planning Minister's comments in June 2014 that the financing of infrastructure is a "bit of a mess" and suggested that a review of CIL would take place after the General Election. Labour are of a similar view that a review is required.

CLG officials have already commenced the scoping process for a future review of CIL. The CLA has submitted a request to CLG officials for a national exemption for agricultural and forestry buildings on two grounds:

(i) there is no uplift in the value of land if a building is erected for the purposes of agriculture on the holding; and
(ii) these are not buildings into which people normally go.

(H) Calling-in planning applications or recovering appeals by SoS

The Secretary of State is now in calling planning applications and appeals on the following:

- Wind farms –The CLG original announcement was about the calling in of applications on wind farms. However, we are seeing a number of single wind turbine planning applications and appeals being called in by the Secretary of State (SoS) which is affecting CLA members.

Recovered appeals - There are a number of areas where the SoS is recovering appeals, these are as follows:

- Traveller sites in green belt - The SoS has been calling in travellers site appeals. On 1 July 2013 the SoS temporarily expanded these criteria for six months to include appeals relating to traveller sites in the green belt.

- Renewable energy development – On 10 October 2013 the SoS announced that he would temporarily expand the criteria for six months to include recovering appeals for renewable energy development. He is particularly scrutinising the extent to which the new national planning practice guidance is meeting the government's intentions. On 9 April 2014 the government announced that the recovery process would extend for a further 12 months.

- Use of neighbourhood plans and housing – On 10 July 2014 the government announced that the SoS would like to "consider the extent to which the government's intentions are being achieved on the ground" in relation to the neighbourhood planning regime. For a period of 12 months the recovery criteria has been amended to include "proposals for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.

- Unconventional oil and gas – On 28 July 2014 the government announced that it was publishing new national planning practice guidance on it approach to planning for unconventional hydrocarbons (such as shale gas) in National Parks, the Broads, Areas of Outstanding Natural Beauty and World Heritage Sites. The guidance says that planning applications for exploration and fracking on Article 1(5) land should be refused except in exceptional circumstances and where it can be demonstrated they are in the public interest. For a 12 month period the SoS recovery criteria has been amended to include development concerning unconventional hydrocarbons in these areas.

(I) Permitted development rights under a future Labour Government

The shadow minister for Planning, Roberta Blackman-Woods dislikes the recent introduction of new permitted development rights for change use because they are introduced by central government and have limited tools to amend them. Early suggestions are that a future Labour government would provide planning authorities with powers to set permitted development rights locally, subject to full consultation and local impact assessment. Labour suggests that this could boost development overall, empower democratically-elected councillors and allow consideration of local circumstances and individualities for the benefit of growth.

(J) National Planning Policy under a future Labour government

The Labour party Shadow CLG SoS (Hillary Benn MP) has confirmed that a future Labour government has abandoned plans to reform the National Planning Policy Framework on the grounds that there is need to provide certainty and a period of stability. Rather Labour is setting its sights on tackling "land banking" by "major developers, middle men, promoters and agents".

The proposals floated to date include giving more power to planning authorities to escalate fees where land banking is taking place on land with planning permission and as a last resort giving planning authorities "proper compulsory purchase powers" so that they can sell the land to developers that want to build the homes. Labour would also require all developers to register the land they own.

The shadow planning minister (Roberta Blackman-Woods) has previously suggested that she would like to tweak the NPPF to remove the Duty to Cooperate and introduce a "common methodology for all local planning authorities to use to assess housing need in their areas". We will see if this idea is set out in Sir Michael Lyons review he is undertaking for Labour (likely to be published late September as part of the Labour party conference).

Labour has also set out plans to boost the role of small house builders, self-builders and custom-builders. These small developers say that access to finance and access to land are the key barriers to delivering homes. Labour is proposing a "Help to Build" scheme which is aimed at helping them to access finance through the banks. On access to land Labour are suggesting they will ensure that planning authorities allocate land in their five-year land supply, while giving them guaranteed access to public land.

(K) CLG Select Committee Inquiry – Community Rights

The CLA has submitted a response to the CLG Select Committee Inquiry into Community Rights. The CLA response relates only to Community right to bid – Assets of Community Value (ACV) and sets out our continuing opposition to the introduction of ACV. The CLA response also sets out those areas where further government clarification and/or guidance focussing in particular on:

- the definition of land of community value
- the lack of a definition on what is meant by ancillary use
- the problems around the phrase "recent past".

We are also questioning the widening nature of "community groups" in respect of the listing of city-wide football stadia and Blencathra mountain as assets of community value.

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For further information please contact:

Fenella Collins
Head of Planning
CLA, 16 Belgrave Square
London SW1X 8PQ

Tel: 020 7235 0511
Fax: 020 7235 4696
Email: fenella.collins@cla.org.uk
www.cla.org.uk

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