

Permitted Development – Legal Issues

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“Permitted” – how?

- s55 TCPA – defines development (and what is not)
 - “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”
- s57 TCPA – planning permission needed for development
- s58 TCPA – how planning permission is granted, including:
 - 1(a) “by development order ...”
- s60 TCPA provides for the development order to:
 - specify conditions or limitations in respect of the permission
 - require the approval of the LPA as to matters relating to the permitted operations or the use of the land

The “development order” – GPDO 2015

■ Article 3:

- (1) Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders), **planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.**
- (2) Any permission granted by paragraph (1) is subject to any relevant **exception, limitation or condition** specified in Schedule 2.
- (4) Nothing in this Order permits development **contrary to any condition** imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.
- (5) The permission granted by Schedule 2 does not apply if—
 - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building **are unlawful**;
 - (b) in the case of permission granted in connection with an existing use, that use **is unlawful**.

Art 3 cont'd

- (9A) [Schedule 2](#) does not grant permission for, or authorise any development of, any new dwellinghouse—
 - (a) where the gross internal floor area is less than 37 square metres in size; or
 - (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.
- (10) Subject to paragraph (12), [Schedule 1](#) development or [Schedule 2](#) development within the meaning of the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#) (“the EIA Regulations”) is not permitted by this Order unless—
 - (a) the local planning authority has adopted a screening opinion under [regulation 6](#) of those Regulations that the development is not EIA development within the meaning of those Regulations;

Article 7

- **7. Prior approval applications: time periods for decision**
 - Where, in relation to development permitted by any Class in [Schedule 2](#) which is expressed to be subject to **prior approval**, an application has been made to a local planning authority for such approval or a determination as to whether such approval is required, **the decision in relation to the application must be made by the authority**—
 - (a) **within the period specified** in the relevant provision of [Schedule 2](#),
 - (b) **where no period is specified**, within a period of 8 weeks beginning with the day immediately following that on which the application is received by the authority, or
 - (c) within such **longer period** than is referred to in paragraph (a) or (b) as **may be agreed by the applicant and the authority in writing**.
- [Gluck v Secretary of State for Housing, Communities and Local Government \[2020\] EWHC 161 \(Admin\)](#) “in writing” can be email from one party setting out what was verbally agreed if there is no response from the other party saying “no”.
- (c) was amended wef 1 August 2020 to overcome the ruling in [R\(on the application of Warren Farm \(Wokingham\) Ltd\) v Wokingham BC \[2019\] EWHC 2007 \(Admin\)](#).

Definitions of terms / words used in the GPDO – where are they?

- In the class itself
- In a definition section in the Part – eg Part 3, Para X
- In Article 2 “interpretation”
 - Art 2(3) and 2(4) land
 - “ground level”
- In the Principal Act – ie the TCPA 1990
- None of the above
 - Ordinary and natural meaning in their context
 - Court cases

The Classes in Schedule 2

- The development which is permitted
- The limitations – which must be met for the development to fall within the class permitted
- The conditions subject to which the permission is granted

Definitions - examples

- Part 3, Class O – offices to dwellinghouses
 - **0.3. Interpretation of Class O**
 - For the purposes of Class O, “*commercial premises*” means any premises normally used for the purpose of any commercial or industrial undertaking which existed on the date of application under [paragraph 0.2\(1\)](#), and includes any premises licensed under the [Licensing Act 2003](#) or any other place of public entertainment.
- Art 2:
 - “*cubic content*” means the cubic content of a structure or building measured externally;
 - “*public holiday*” means Christmas Day, Good Friday or a day which under the [Banking and Financial Dealings Act 1971](#) is a bank holiday in England.
- s336 TCPA 1990
- “curtilage” – be careful! Check the Parts and Classes

Issue 1 – does what is proposed fall within the ambit of what is permitted?

- Q. Permitted development
 - *Development consisting of—*
 - (a) a **change of use of a building** and any land within its curtilage from a use as an agricultural building to a use falling within [Class C3](#)(dwellinghouses) of the [Schedule](#) to the Use Classes Order; or
 - (b) development referred to in paragraph (a) **together with building operations** reasonably necessary to **convert** the building referred to in paragraph (a) to a use falling within [Class C3](#)(dwellinghouses) of that Schedule.
- *If what is proposed is not a **conversion** but is instead a **re-build** or a **fresh build**, then Class Q does not apply.*

Issue 1 – an example:

[Keenan v Woking BC \[2017\] EWCA Civ 438](#)

- Part 6, Class A – *“The carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of— (a) works for the erection, extension or alteration of a building; or (b) any excavation or **engineering operations**, which are **reasonably necessary for the purposes of agriculture** within that unit.”*
- Prior notification application made – not responded to in time. Track built.
- Enforcement notice issued – track not “reasonably necessary”. Upheld on appeal.
- Lindblom LJ gave the leading judgment in the Court of Appeal:
 - “the development in question had to come fully within the relevant description of the “permitted development” provided for within each class. If it did not, the provisions for “conditions” applicable specifically and only to “permitted development” as thus defined could not relate to it”
 - The prior approval process does not “confer upon the authority a power to grant planning permission for development outside the defined class of permitted development.”

Issue 1 – cont'd

- “The local planning authority does not have the power, under the provisions for conditions ..., to vary the terms of the "permitted development" rights within the relevant class. Those provisions do not empower an authority to consider whether permission should be granted for development which is not of the specified type and description: for example, in the case of agricultural buildings and operations, development on an agricultural unit smaller than the specified minimum size of five hectares.”
- Same approach followed subsequently in:
 - *New World Payphones v Westminster CC* [2020] 1 P&CR 20 (A telephone kiosk which incorporated an illuminated advertisement display panel had the dual purpose of providing both electronic communications and advertising, and so did not fall within the scope of development permitted by Part 16, Class A)

Issue 2: Do any of the limitations disqualify what is proposed?

- Class P.1 – (change of use from B8 to dwellinghouse)
 - (c) the prior approval date falls on or after 10th June 2019;
 - (k) the development is not completed within a period of 3 years starting with the prior approval date.

- Class Q.1 – (agricultural building to dwellinghouse)
 - (h) the development would result in the external dimensions of the building **extending beyond** the external dimensions of the existing building **at any given point**
 - Window sills / head casings?
 - Guttering?
 - Boiler / fire flues?
 - Dormers?

Issue 2 – cont'd

- Part 6, Class A.1:
 - (i) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or **to be used for the accommodation of livestock** or for the storage of slurry or sewage sludge where the building, structure or excavation is, or would be, **within 400 metres of the curtilage of a protected building**;
- In *R(Marshall) v East Dorset DC* [2018] 2 P&CR 2 the applicant stated the building would be used to accommodate livestock. Prior approval given wrongly. There was no permission for the building.
- Class A.2 – limitations on PD for dwellinghouses in NP, the Broads, AONB, CA, WHS etc

Issue 3 - conditions

- Class Q.2
 - (3) Development under Class Q is permitted subject to the condition that development under [Class Q\(a\)](#), and under [Class Q\(b\)](#), if any, must be completed within a period of 3 years starting with the prior approval date.
- Contrast with time limits imposed by “limitation”
- What is the action for a breach of “time” condition?

Consequences

- Not in the Class description – no permission
- Limitation not met – no permission
- Condition not met
 - Breach of planning control
 - Breach of condition – enforce to remedy the breach
 - Different development altogether – enforce against the development as a whole

Prior Approval

- **Conditions** in various Classes provide for “prior approval”
 - “and the provisions of [paragraph W](#) (prior approval) of this Part apply in relation to that application.”
- **W.— Procedure for applications for prior approval under Part 3**
 - (1) The following provisions apply where under this Part a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required.
 - Includes: information required, requirements for consultation by LPA (eg highways, flood risk), giving public notice, risk assessment, having regard to the NPPF.

Para W cont'd

- (11) The development must not begin before the occurrence of one of the following—
 - (a) the receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;
 - (b) the receipt by the applicant from the local planning authority of a written notice giving their prior approval; or
 - (c) the expiry of 56 days following the date on which the application under sub-paragraph (2) **was received by the local planning authority** without the authority notifying the applicant as to whether prior approval is given or refused.

Para W cont'd

- (12) The development must be carried out—
 - (a) **where prior approval is required**, in accordance with the details approved by the local planning authority;
 - (b) **where prior approval is not required**, or where sub-paragraph (11)(c) applies, in accordance with the details provided in the application referred to in sub-paragraph (1),
unless the local planning authority and the developer agree otherwise in writing.
- (13) The local planning authority may grant prior approval unconditionally or **subject to conditions reasonably related to the subject matter of the prior approval.**

Prior Approval – practical issues

- When is the application “received”?
 - Up loaded?
 - Down loaded?
 - Validated?
- How long will it take to consider this application?
- Do we need any further information?
- Do we need to agree an extension of time?
- Do any of the exceptions in Article 3 apply? Habitats Regs, EIA Regs, conditions on planning permission.
- Does the proposal appear to fit within the Class relied on?
- Are any limitations of that Class breached?
- Have we consulted those we need to?
- Have we notified those we need to?
- What (additional) conditions do we need to apply?

Legal advice:

- Essential equipment for planning officers!

