

# Planning Guidance for Agricultural Prior Notification Applications



## **Background**

Agriculture (and in particular agricultural and farm enterprises) benefit from wide scale permitted development rights as expressed and afforded by the Town and Country Planning (General Permitted Development Order) 1992, Class 18 and as amended. This means for those who are applicable and who qualify for these (outlined further below), certain developments and works can be exempt from the requirement of full planning permission and proceed without it, pending compliance with all the other relevant requirements, thresholds and procedures.

Notwithstanding this, these benefits are partially eroded by the provision of and indeed the extension to the 'prior notification system'. This formal application process is seen as a mechanism which allows the Planning Authority to retain partial control over the above permitted developments rights and through a 28 day period consider whether any development or proposal under such an application qualifies for the above in terms of prior notification or indeed whether prior approval is required. The following section explains this process in more detail.

## **Prior Notification process**

Unlike planning permission and other consents, Prior Notification is a procedure whereby an applicant must notify the planning authority of proposals before exercising permitted development. This procedure will not result in the granting of planning permission. The end result will be a determination that 'prior approval' is or is not required.

If the decision is that prior approval is required, further information may be requested by the planning authority in order to determine whether approval should be given. This could be requested if the planning authority have concerns about the environmental impact of the development and may as a result in a request for changes in terms of siting, design and appearance to be made. Fundamentally, the requirement for prior approval is dependent on whether the authority considers at the time of assessment the proposal, if it is likely to have significant impact on its surroundings and if there are reasonable amendments which could be taken to mitigate this.

Please note, the granting of prior approval can result in conditions being attached to an approval. Prior approval can also be refused in which case an appeal can be made.

## **What type of development needs to be notified?**

Anyone intending to build or significantly alter/extend a farm or agricultural building or structure is required to notify the planning authority of their intention to carry out such development. Also anyone wanting to form or alter a private way or carry out excavation or engineering operations in relation to a farm or agricultural undertaking must also notify the planning authority in advance. The above works may be permitted development and this notification applies to the exercise of permitted development rights only i.e. to development for which planning permission is not required.

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If you believe that your proposal or development, exceeds or contradicts the thresholds and requirements of Class 18, it may require full planning permission. In this instance it is advise that you speak with the planning authority.

## **Can I apply for agricultural prior notification?**

Fundamentally to qualify and benefit from the above permitted development rights (Class 18) you need to comply with and potentially demonstrate the characteristics and requirements of a number of matters defined within the terms of the relevant planning legislation. The Town and Country Planning (Scotland) Act 1997 and the General Permitted Development Order Act (Scotland) 1992 either outlines or defines each of the qualifying requirements linked to Class 18 (agriculture, agricultural land, agricultural unit). This is important to understand and consider as the Planning Authority will review this broadly in the assessment of the prior notification process to establish if you do qualify under such considerations.

Broadly Class 18 of the GPDO outlines those who are generally applicable and in turn stipulates the following works/development are linked to this Class:

### ***The carrying out on agricultural land comprised in an agricultural unit***

- ***Works for the erection, extension or alteration of a building***
- ***The formation, alteration or maintenance of private ways, or***
- ***Any excavation or engineering operations.***

### ***Requisite for the purposes of agriculture within that unit.***

It is important to understand each of these elements in terms of their specific definition within the planning legislation.

Firstly is the definition of agriculture in planning law and legislation terms. Any works, structure or development proposed through the prior notification must be attributed to or directly support or facilitate an identifiable agricultural use or activity. This is a consistent requirement and is necessary irrespective of the proposed development be it a structure, building, road or path.

### **Definition of Agriculture (As defined in the 1997 act)**

***“horticulture, fruit growing, feed growing dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food , wool, skin or fur, for the purposes of its use in the farming of land.”***

Please note that a fine line can exist within the planning system between ‘country’ and ‘agricultural’ activities, which whilst in practice may appear to be similar in terms of the physical works or activity associated, but in planning terms and for the purposes of class 18 and indeed the consideration of a prior notification, have different consenting requirements. If you are unsure please contact the planning authority.

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On this basis, further to a requirement for any proposed development applied for under the prior notification to be linked with or support any of the above agricultural activities, the land applicable for the development must be agricultural in use and nature and also must be linked to or attribute to a wider 'Agricultural Unit'.

This extends beyond simply the 'Planning Unit' which would be the area of land where the development or process is proposed and the surrounding land and accounts for a wider demonstration of the extent of the farming or agricultural enterprise it relates to. These matters are defined as follows in planning terms:

## **Definition of 'Agricultural Land' (As defined in the GPDO 1992 applicable to Part 6 including Class 18)**

***"Agricultural land" means land which, before development permitted under this Order is carried out, is land in use for agriculture and which is used for the purposes of a trade or business and excludes any dwellinghouse or garden or any land used for the purposes of fish farming***

## **Definition of 'Agricultural Unit'**

***"Agricultural unit" means agricultural land which is occupied as a unit for the purposes of agriculture other than fish farming, but includes –***

- a) Any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit; or***
- b) Any dwelling on that land occupied by a farmworker;***

Whilst all of the above should be understood separately in terms of their meaning, at the same time it is important to recognise that each is intrinsically linked to one another and that all require to be in place and in operation in conjunction with one another as to allow you to be considered within the parameters of Class 18.

Furthermore, any use within the land or forming part of the defined agricultural unit which is notably not agricultural will require to be both ancillary and subordinate to the agricultural practice. Please note where other activities are present on the land or wider unit, depending on the nature of these, and including the scale of the activity and its presence within the wider agricultural unit, the planning authority may consider this to be '**mixed use**' facility. This could prevent it from being considered wholly agriculture and in turn prevent you qualifying for consideration in relation to the Class 18 permitted development rights.

## **Prior Notification requirements**

Further to the specific requirements stipulated within the legislation for a prior notification, East Ayrshire Council may seek further clarification and information to validate and demonstrate that you are applicable (taking note of the definitions outlined in the previous section).

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Please be prepared that the following information may be sought to demonstrate and evidence the nature of the agricultural activity or business.

- A plan showing the full extent of the wider 'agricultural unit' that the development relates to
- Details regarding the nature of the agricultural activity on the land in which the development is proposed.
- A Business reference number (BRN) connected with the farm/agricultural enterprise alongside agricultural holding numbers (AHN) for the application site.
- Details relating to the specific agricultural purpose of the proposed development or the agricultural use or activity to which it is to support and facilitate.
- Clarification on the linkage between the size and scale of the proposed building and the agricultural uses of the application site which the proposed building is intended to support.
- Historic details (and dates if possible) as to how long the agricultural activities associated with the land and unit have been undertaken

## **What happens next?**

The planning authority has 28 days from receipt of the notification to respond. You should receive acknowledgement informing you of the date of receipt. You should not start work within the period of 28 days from the date on which the planning authority received your notification unless the planning authority indicate in writing that you are permitted to do so. If the planning authority does not respond within this 28 day timescale, the development can proceed exactly as notified.

## **Prior Approval**

If the planning authority responds by advising that prior approval is required. It may request modifications or additional information. If so please comply with the planning authority's requests.