

Permitted development rights liberalisation in rural England: love's labour's lost?

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permitted development rights liberalisation in rural England – love's labour's lost?

Stephanie Baker and **Gavin Parker** look at the changes made to permitted development rights to enable a switch from agricultural to residential use, and at the impact of these changes to date







PDR changes made to enable a switch from agricultural to residential use have received a broadly critical reception

A feature of the planning system in England is the 'permitted development rights' (PDRs) tool, expressed through the General Permitted Development Order (GPDO), informed by the Use Classes Order (UCO). These set out the various land uses and types of development that can proceed without requiring a planning application. PDRs were intended to enable changes of use that involve minimal impact or to reduce the negative

externalities of existing uses. Since 2013 the way that PDRs have been extended indicates a shift in rationale; one which has attracted a chorus of disapproval, and which is continuing.

Both the GPDO and the UCO have been subject to numerous amendments over the past 30 years,¹ and the PDR regime has been tweaked in a number of ways since 2013,² including the introduction of changes from office to residential use in part 3 of

Table 1
Agricultural to residential PDR changes made since 2013

GPDO 2013 (May) – tentative two-year trial	PDR class M flexible changes of use (business related) – temporary measure, to assess impacts to community and neighbours
	
GPDO 2014 (April) – tentative	PDR class MB for agricultural to dwelling – temporary measure, considerations limited
	
GPDO 2015 (April) – permanent permissive	PDR class Q changes of use made permanent (no time limit) and further extended, with considerations limited
	
Response to rural technical consultation by the Department for Communities and Local Government, February 2017	Further changes planned – additional agricultural to residential use PDR for conversions of up to 750 square metres; maximum of five new dwellings. Also proposed amending existing class Q to increase the floorspace threshold
	
GPDO 2018 (April) – class Q extension	Extension of class Q to allow up to five residential units, including a mix of ‘larger’ and ‘smaller’ units

the GPDO. This latter change in particular has provoked an outcry – especially in smaller towns where office location and supply is constrained. The focus of this article is the PDR changes made to enable a switch from agricultural to residential use – which have also received a broadly critical reception.³ Table 1 outlines the recent changes made to agricultural conversion PDRs (now labelled as class Q), which we concentrate upon here.

Ostensibly, the wider PDR toolkit is being used as one of many means to liberalise planning, with the aim of adding further impetus to the development of new homes rather than focusing on giving flexibility where impacts are minimal. Many view the shift in application since 2013 as a (mis-)use of this part of the planning system, citing the approach as undermining the plan-led system⁴ and foreseeing negative consequences for long-term sustainable development. Concerns have been raised over the loss of existing or potential employment land sites and the possible promotion of unsustainable development. There have also been issues voiced regarding the determination process and the criteria used to justify the changes as the outcome takes impact. A final point is the apparent contradiction between the extension of these tools in an era of localism.

The range of PDRs within the GPDO provides various tools for agricultural landowners to expand their operations without requiring planning consent (under part 6 of the GPDO). Part 3 of the GPDO provides numerous options for diversification into non-agricultural uses. However, motivations for pursuing one PDR over another – for example class Q over a class R (to a flexible commercial use) or class S (to state-funded school or registered nursery) – have not been discussed in any depth.

Indeed, only limited research has been carried out to date on the reforms to PDR in general made since 2013. Collier⁵ reported in this journal on the agricultural to residential change of use in its 2013 manifestation, labelled ‘class MB’, which was modified and reassigned as class Q in 2014. Class Q allowed particular agricultural outbuildings to be redeveloped for residential use of up to three full-market housing units, and quickly became known as the ‘barn conversion’ policy. This option has been operating for sufficient time to take stock of its performance against the intended aims. This is timely as the government has been reviewing the policy once again – following some voices arguing for such ‘freedoms’ to be extended.⁶ Recent announcements from the Department for Communities and Local Government (DCLG,

now the Ministry of Housing, Communities and Local Government – MHCLG) enable further relaxation of class Q to provide greater numbers of residential units from April 2018.⁷

We reflect here on the unintended consequences of this policy in light of competing rural economic and social objectives (beyond the narrower aims of realising capital value from agricultural property assets as market housing units), and consider the case made for the changes, set against actual evidence and wider policy objectives for the rural economy.

Removing the barriers to growth

Central government intentions and motivations for implementing the agricultural to residential PDR changes appear to centre on familiar tropes of relaxing constraints and enabling growth. After 2010 the government was at pains to claim that its suite of policies on planning would remove barriers to economic growth, and in particular to housing development. The PDR regime was seen as a tool that could be deployed to this end, and the issues paper on PDRs published by DCLG in 2011 indicated this clearly:

*'We want to remove unnecessary barriers so that businesses succeed, homes can be provided and jobs created which will bring prosperity. Our aim is to ensure that full consideration is given to the balance between supporting growth and ensuring communities have the opportunity to influence their environment.'*⁸

The subsequent DCLG consultation paper on PDRs issued in 2012 detailed the intended aims of the changes as 'reducing burdens' on landowners and 'supporting growth' (in the broad sense that development encourages growth) so as to 'stimulate economic activity'.⁹ Similar arguments in support of the changes were repeated by the then Housing Minister when the 2015 PDR iterations were unveiled:

*'we can tap into the potential of underused buildings to offer new homes for first-time buyers and families... breathing new life into neighbourhoods and at the same time protecting our precious green belt.'*¹⁰

While DCLG claimed to want to see input from various parties in order to collaboratively resolve the debate over PDR relaxations, the policy evolution has appeared to ignore comments raised by a number of authoritative voices, including the Planning Officers Society, London Councils, and others.¹¹ The subsequent summary of responses published by the government highlighted the considerable reaction, and it was the Country Land and Business Association (CLA) that had made a strong case in relation to agricultural use change liberalisation.

Our reading indicates that fundamental change was widely seen as *unnecessary* as the existing tools (i.e. the existing UCO and GPDO as well as the planning consent approach) were seen as sufficient and appropriate. It was argued by some that the PDR system was well understood by stakeholders, and a central problem identified was that any significant changes would most likely create uncertainty.

'Our reading indicates that fundamental change was widely seen as *unnecessary* as the existing tools (i.e. the existing UCO and GPDO as well as the planning consent approach) were seen as sufficient and appropriate'

Moreover, a change of use can be a locally contentious issue, particularly for small rural communities, and lifting such changes out of local democratic processes appears to run contrary to the spirit of localism and the plan-led system. DCLG aimed to mollify opposition to the proposals by arguing that local planning authorities could choose to impose Article 4 Directions to avoid the relaxations in certain areas (however, such measures could render local planning authorities liable to compensation).

This pre-emptive approach indicated that the government was anticipating a sceptical reception in certain quarters. Some respondents to the consultation went further still and countered the suggestions being tabled by questioning whether *greater* regulation was required – rather than further deregulation.

While planning reform and changes to further liberalise planning have persisted, ongoing and parallel debates on rural restructuring and the economic development of rural areas have also continued. The ten-point plan for rural areas published by the Department for Environment, Food and Rural Affairs (Defra) in 2015¹² can be summarised as attempting to improve five main elements relevant here:

- making it easier to live and work in rural areas;
- creating strong conditions for rural business growth;
- affording greater local control;
- developing a highly skilled rural workforce; and
- ensuring that rural areas are fully connected to the wider economy.

A brief comparison against such points shows how class Q appears to make it easier for *non-workers* to

live in rural areas, as rural workers needing to live at or close to their place of work are covered under ‘special circumstances’ set out in para. 55 of the National Planning Policy Framework (NPPF).

It may also be argued that class Q actually hinders business growth (it represents both an opportunity cost and restricts PDRs in part 6 of the GPDO – preventing diversification elsewhere on the holding). Pursuing class Q removes PDRs under part 6, obstructing landowners from expanding their farming operations in the future. Consequently landowners would, for example, need to submit planning applications simply to erect agricultural barns.

How have the rural permitted development rights been used?

An overview of how class Q PDRs have actually been used in practice is set out here. Our findings

indicate that this route to lawful development is less successful in terms of approval rates compared with a traditional planning application approach (partly due to difficulties in navigating through the details or meeting the conditions – for the latter see the article by Collier⁵ published in this journal in 2015).

The agricultural to residential PDR class Q accounted for only 1.7% of the housing supply across the suite of residential PDRs approved in 2016-17 (330 out of 18,887), and similar statistics from 2015-16 show that only 1.6% of the PDR contribution to housing supply came from class Q (226 out of 13,879).¹³ This is not a substantial contribution to the overall supply, and of course crucially for us this plays no role in delivering the affordable housing units which are needed acutely in rural England (and produces no other contributions).

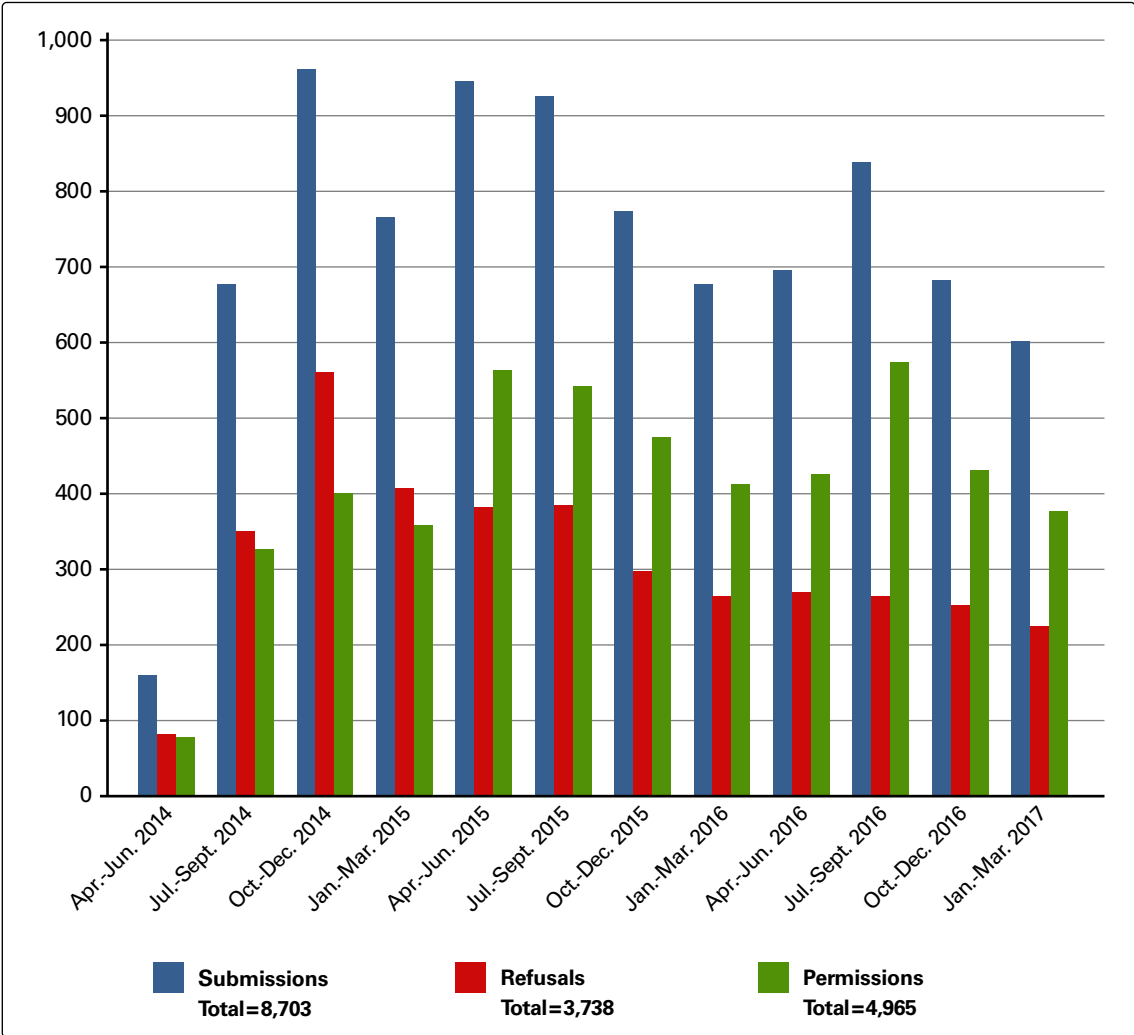


Fig. 1 Number of class Q submissions and determinations (second quarter 2014 to third quarter 2016)

Source: Adapted from DCLG statistics¹⁴

Table 2
Class Q applications and determinations, at local planning authority, sub-region and national levels

Scale/sample	Outcomes	Determination rates, %
Class Q – local planning authority example (n=60)	<ul style="list-style-type: none"> ● 32 out of 60 approved ● 21 out of 60 refused ● 7 other (withdrawn etc.) 	<ul style="list-style-type: none"> ● Approval rate 53.4% ● Refusal rate 35% ● Other 11%
Class Q – sub-region example (n=212)	<ul style="list-style-type: none"> ● 110 out of 212 approved ● 102 out of 212 refused 	<ul style="list-style-type: none"> ● Approval rate 51.8% ● Refusal rate 48.2%
Class Q – England (n=8,703)	<ul style="list-style-type: none"> ● 4,965 out of 8,703 approved ● 3,738 out of 8,703 refused 	<ul style="list-style-type: none"> ● Approval rate 57.1% ● Refusal rate 42.9%

Source: Anonymised local planning authority case example statistics, 1 April 2014 to 31 March 2017

The national data does not drill down into the number of units permitted (or indeed implemented); it simply records the number of approvals. The number of units which therefore could have been delivered in theory through class Q is between 4,965 and 14,895, depending on whether applicants chose to convert their barns to a single dwelling, semi-detached dwellings or three units. In any event, this represents a significant number of units in rural locations – where the need is for affordable units and supply is most constrained.

Fig. 1 shows that over a three-year period the approval rate for class Q was only 57%. However, there was still a large volume of submissions, and the number had grown over the period by 276%. The volume of cases places additional pressure on local planning authorities to deal with high numbers of submissions within 56 days – and these submissions also attract lower processing fees.

In the case study local planning authority that we investigated as an example, there were approval rates for class Q of only 53.3% (see Table 2). When analysing comparable local planning applications relating to rural small-scale applications (i.e. conversions), the approval rates show that the plan-led approach provides a greater chance of successfully gaining approval (72.7%). These figures provide evidence that while class Q provides an alternative avenue for landowners to pursue, the conversion of buildings in the countryside is already largely supported by Local Plans, as underpinned by the NPPF. Therefore it seems that the government had already resolved the ‘unnecessary barriers’ to rural conversions (thus rendering class Q as somewhat surplus to requirements), while also missing an opportunity either to encourage diversification or to deliver much-needed affordable units.

The statistical analysis demonstrates that, at both at the local and national levels, the approval rates of class Q are lower than for planning applications,

while the volume of class Q submissions is significantly higher – this could be characterised as cluttering the planning system rather than a simplification or an unbundling. The volume of submissions of class Q received by our example study local planning authority were significantly higher than the number of planning applications for conversion or new builds in the countryside; 60 compared with 24. This could be indicative of applicant perceptions of greater success through PDRs or perhaps due to reduced fees for submitting a class Q application.

‘This could be characterised as cluttering the planning system rather than a simplification or an unbundling’

With the higher approval rates for rural conversion planning applications than class Q, it could be reasonably concluded that the introduction of class Q is reducing the total number of rural worker dwellings or affordable dwellings approved at the same time as reducing the fee income for local planning authorities. These impacts compound the issue of undermining the localism agenda and plan-led process through reduced community engagement, which is detrimental to the public interest. The research uncovered uncertainty among parish councils as to their role in commenting on and influencing the outcome of proposed development in their area:

‘...PDR policy contradicts contemporary notions of localism, collaborative democracy and accountability... [it] also signals a break from the contemporary concern with spatial planning ...place making, local distinctiveness, and the

*broader concerns of the local community and stakeholders.*¹⁵

The consideration of qualifying criteria for PDRs is intricate (in some cases requiring Planning Inspectors' decisions), rather than being simpler or 'light touch'. Class Q provides market dwellings in countryside locations which may well be refused under the normal planning process. This does not instil public confidence in the planning system and has the potential to create local conflict in rural communities. It is unclear as to precisely why, within the context of the localism agenda, DCLG chose to take this route.

Class Q provides a tool for delivering market housing for non-workers through rural conversions. However, the same development proposals would have been more successful in terms of approval percentage if submitted as planning applications, and would have been scrutinised publicly. There are additional blows for local planning authorities to absorb here in terms of lost fee income and time spent on class Q determinations.

'We see this as an example of policy iteration based on premises that were not rooted in stakeholder advice or experience, and instead appears to reflect either interest group capture or ideological dogmatism or both'

If any non-agricultural uses have already been undertaken on the agricultural unit in question then class Q rights would automatically not apply. This appears to conflict with the Defra ten-point plan which sets out aims of reducing the regulatory burden and improving planning in rural areas. This could also have rural employment ramifications, with the scarcity of agricultural barns leading to fewer business expansions and farmers instead 'winding down' their operations or selling up to enable farm agglomeration. Our reading is that DCLG (now MHCLG) has implemented a PDR which discourages diversification and entices landowners to consider a residential option for one-off financial gain, as opposed to innovation or future-proofing. This appears somewhat incompatible with Defra's aims for farm diversification.¹⁶

We are also mindful of likely opportunities for farm and other rural business expansion post-Brexit and a re-worked rural support regime. The need to

diversify (and opportunities to do so) means that it is likely that more, rather than less, pressure on rural employment sites will develop, and class Q may well exacerbate this.

Concluding comments

The issues paper produced by DCLG in 2011 was framed around a problem of rural productivity; boosting growth and supporting economic activity. Class Q PDRs, however, do not contribute to resolving any of these issues. Class Q reduces agricultural land use and permits market dwellings in isolated locations at the cost of possible rural diversification and democratic involvement. The changes have taken power away from communities and placed it into the hands of individual landowners.

There is a quite fundamental divergence of philosophy and priority highlighted by the iterations of changes in rural PDRs. The process and outcomes of the changes undermine principles of sustainable development and also appear to downgrade rural economic development aims. We see this as an example of policy iteration based on premises that were not rooted in stakeholder advice or experience, and instead appears to reflect either interest group capture or ideological dogmatism or both.

The recent statement by the Housing Minister⁷ portraying class Q as a tool for 'rural communities', delivering 'family' homes to meet 'local' housing need is, in our view, unlikely to be realised with the current policy wording. The reality is that class Q is a tool for landowners, enabling them to deliver full market dwellings to meet demand rather than need. Unless the April revisions drastically reform the entire class Q PDR, the latest Ministerial statement does little to assist rural communities and their housing needs.

The summary of class Q performance can be outlined as follows:

- Class Q contribution to overall housing supply is nominal at the local planning authority and national level, compared with the plan-led approach.
- The contribution to *rural* housing supply is significant through class Q due to the volume of submissions, although there are **no affordable units** delivered or off-site contributions.
- There is a perception of class Q being a convenient means to develop a fall-back position to establish the principle of three dwellings (now five) on a site (a pre-cursor to comprehensive schemes).
- There have been permissions for non-worker market dwellings where they would historically have been refused (no special circumstances).
- There is a lack of community benefits, but windfall private economic benefits.

- Implemented PDRs differ from the original conceptualisation.

We highlight here that the rhetoric of class Q conversions ‘cutting red tape’ or ‘boosting housing supply’ is exaggerated and that the benefits seem insufficient to warrant undermining the plan-led process. Equally, the repercussions and opportunity costs are not inconsequential matters to be traded off lightly for the benefit of individual landowners’ financial gain.

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Notes

- 1 Initiated under The Town and Country Planning (Use Classes) Order 1987. Statutory Instrument 1987 No. 764. www.legislation.gov.uk/ukxi/1987/764/schedule/made
- 2 The first iteration was introduced as class MB in 2013 and then introduced through Schedule 2, Part 3, class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015. See L Smith: *Planning: Change of Use*. House of Commons Library Briefing Paper 01031. House of Commons, Jul. 2017. <http://researchbriefings.files.parliament.uk/documents/SN01301/SN01301.pdf>; and *How Change of Use is Handled in the Planning System – Tell Us What You Think*. Issues paper. Department for Communities and Local Government, Jun. 2011. www.gov.uk/government/uploads/system/uploads/attachment_data/file/6082/1930771.pdf
- 3 See *The Impact of Permitted Development Rights for Office to Residential Conversions*. Briefing. London Councils, Aug. 2015. www.londoncouncils.gov.uk/our-key-themes/housing-and-planning/permitted-development-rights/impact-permitted-development-rights; D Dewar: ‘Are councils still sceptical about barn conversions?’. *Planning*, 23 Sept. 2016. www.planningresource.co.uk/article/1409589/councils-sceptical-barn-conversions; and K Muldoon-Smith and P Greenhalgh: ‘Greasing the wheels, or a spanner in the works? Permitting the adaptive re-use of redundant office buildings into residential use in England’. *Planning Theory & Practice*, 2016, Vol. 17 (2), 175-91
- 4 R Garlic: ‘Deregulation trial must be watched closely’. *Planning*, 17 May 2013. www.planningresource.co.uk/article/1182480/deregulation-trial-watched-closely
- 5 D Collier: ‘From class MB to class Q rights – the teething troubles of new permitted development’. *Town & Country Planning*, 2015, Vol. 84, Sept., 404-6
- 6 For example, *Heritage and Other Farm Buildings: The Conversion of Farm Buildings to New Uses*. CLA Guidance Note GN08-16. CLA (Country Land and Business Association), May 2016. www.cla.org.uk/sites/default/files/GN08-16%20Conversion%20of%20farm%20builds%20to%20new%20uses.pdf; and See L Smith: *Planning: Change of Use*, p.19 (see note 2)
- 7 ‘Housing Minister announces homes boost for rural families.’ Press release. Ministry of Housing, Communities and Local Government, Mar. 2018. www.gov.uk/government/news/housing-minister-announces-homes-boost-for-rural-families; and see The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018. Statutory Instrument 2018 No. 343. www.legislation.gov.uk/ukxi/2018/343/made
- 8 *How Change of Use is Handled in the Planning System – Tell Us What You Think* (see note 2)
- 9 *New Opportunities for Sustainable Development and Growth through the Reuse of Existing Buildings*. Consultation paper. Department for Communities and Local Government, Jul. 2012. www.gov.uk/government/uploads/system/uploads/attachment_data/file/8351/2171937.pdf
- 10 ‘Thousands more homes to be developed in planning shake up’. Press release. Department for Communities and Local Government, 13 Oct. 2015. www.gov.uk/government/news/thousands-more-homes-to-be-developed-in-planning-shake-up
- 11 See *Change of Use Alterations*. Consultation response. Planning Officers Society, Oct. 2013. www.planningofficers.org.uk/POS-Library/POS-Responses/Change-of-Use-Alterations_434.htm; *The Impact of Permitted Development Rights for Office to Residential Conversions* (see note 3); and K Muldoon-Smith and P Greenhalgh: ‘Greasing the wheels, or a spanner in the works?’ (see note 3)
- 12 *Towards a One Nation Economy: A 10-Point Plan for Boosting Productivity in Rural Areas*. Department for Environment, Food and Rural Affairs, Aug. 2015. www.gov.uk/government/publications/towards-a-one-nation-economy-a-10-point-plan-for-boosting-rural-productivity
- 13 Live Table 120: ‘Components of net housing supply, England 2006-07 to 2016-17’. Live Tables on Dwelling Stock. Department for Communities and Local Government, 2017. www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants
- 14 Live Table PDR 1: ‘District planning authorities – applications for prior approvals for permitted developments, by local planning authority’, and Live Table PDR2: ‘District planning authorities – applications for prior approvals for permitted development’. Live Tables on Planning Application Statistics. Department for Communities and Local Government, 2017. www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics#permitted-development-rights-tables
- 15 K Muldoon-Smith and P Greenhalgh: ‘Greasing the wheels, or a spanner in the works?’, p.193 (see note 3)
- 16 *Diversifying Farm Businesses. How Farmers Can Add Business Activities to Traditional Farming to Develop New Sources of Income*. Guidance. Department for Environment, Food and Rural Affairs, Sept. 2012, updated Jan. 2014. www.gov.uk/guidance/diversifying-farming-businesses