# Horses and Planning – England and Wales

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(This guidance note replaces GN05-13 which should be deleted from your files)

## 1. Introduction

This guidance note is concerned with Planning law as it applies to all uses which focus on horses. In particular this guidance concerns the keeping of horses and ponies for private leisure purposes, but its contents will be relevant to riding schools, livery and racing stables, and stud farms etc.

Planning authorities will be interested in the use of premises or land for horses, especially where it can be shown that there has been a change of use of the existing farm buildings or a change of use of the land, or where it is proposed to erect: new stables, indoor or outdoor riding arena, jumps, cross-country course, lighting etc.

This guidance note relates to the planning systems in both England and Wales.

## 2. Need for Planning Permission

Planning permission is required for the carrying out of any development of land. Development is defined by section 55 of the Town & Country Planning Act 1990 (the Act) and is summarised below as either:

*"the carrying out of building, engineering, mining or other operation in, on, over or under land"; or the making of any material change of use of any buildings or other land".*

Most development required for equestrian purposes and/or equestrian uses of land will require permission of some sort. Some development may be possible under permitted development rights as set out in:

- England, the Town and Country Planning (General Permitted Development)(England) Order 2015 (GDPO 2015) which applies in England only http://www.legislation.gov.uk/uksi/2015/596/made. The GPDO 2015 came into force on 15 April 2015 and replaced the Town and Country Planning (General Permitted Development) Order 1995 (as amended);
and
- Wales, the Town and Country Planning (General Permitted Development) Order 1995 (as amended) http://www.legislation.gov.uk/uksi/1995/418/contents/made which continues to apply in Wales.

More can be found on this in section 8 of this guidance note.

## 3. Use of Land

Planning permission is not required for the use of land for the purposes of 'agriculture'. The definition of agriculture in section 336 of the Act includes:

*"….horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins, or fur or for the purposes of farming the land), the use of land as grazing land, meadow land, osier land, market garden and nursery grounds, the use of land for woodlands where that use is ancillary to farming of land for agricultural purposes."*

## 4. Planning law and Horses

Planning law recognises six types of horse:

(i) **The working horse**: the keeping and breeding of horses used to work agricultural land is an agricultural use (i.e. livestock bred or kept for the purpose of its use in the farming of land);

(ii) **The racehorse**: keeping and breeding race horses is not an agricultural use of land because they are not livestock kept for agricultural production, though a racehorse may graze (see Grazing and Keeping section below);

(iii) **The recreational horse**: keeping them (as opposed to grazing them, see more in section 5 below) is not an agricultural use of land. There may be a material change in the use of agricultural land when it is subdivided into 'pony' paddocks, when shelters are provided (see section 7 below) or when farm buildings are converted to livery use. The keeping of a recreational horse on agricultural land may mean that the land has changed to a recreational use; or it may result in a mixed agricultural/recreational use;

(iv) **The grazing horse**: the use of land as grazing land is an agricultural use. This means that the use of land for ***grazing*** any of the above horses is considered to be an agricultural use; but not the use of the land for ***keeping*** them. See more in section 5 below on the distinction between grazing and keeping.

(v) **The residentially incidental horse**: the keeping of a horse within the curtilage of a dwelling house may, though not an agricultural use, be incidental to the enjoyment of a dwelling-house and thus permitted. (See section 8 for more information on permitted development rights that may be available).

(vi) **Horsemeat**: human consumption of horsemeat is common in other European countries and the breeding and keeping of horses for food production would clearly constitute an agricultural use of land.

## 5. What is the difference between Grazing and Keeping

In order to establish whether the use of land is agriculture or not it is necessary to establish whether the horses are "grazing" or being "kept" on the land. Often there is a fine line between the two as defined in *Sykes v Secretary of State for the Environment (1981) 42 P&CR19* (Sykes).

In Sykes the Court had to consider whether the use of agricultural land for grazing horses was within the definition of agriculture (see section 3 above for definition).The Secretary of State had held that it was, and his view was supported by the Court.

However, the decision in Sykes raised important issues with regard to the use of land for what is sometimes referred to as 'horsiculture'. This usually refers to the practice of keeping horses on land for horse-riding purposes. If the land is used for that purpose the horses may need to be supplied with additional food (in the form of hay, straw, horse nuts etc) to supplement their grazing in-take. At this point the question to be asked is: What use is being made of the land? Is it for the purpose of grazing? If not then the activity may amount to a material change of use which will require planning permission.

Donaldson L.J.'s opinion in the Court of Appeal decision in *Sykes* is summarised as follows:

"*Land can be said to be used for grazing if horses are turned onto it with a view to feeding them solely from the grass, but not if they are kept on it for some other purpose, when grazing is seen as completely incidental and inevitable. In other words if horses are simply turned out on land with a view to feeding them from that land then it is clearly in use for grazing.* "

The ruling in Sykes distinguishes between the use of land to graze horses which may be carried out without material change of use of agricultural land, and the keeping of horses which would be a change of use of the land requiring planning permission.

So planning permission is normally required for the use of land for keeping horses (i.e. supplementary feeding and equestrian activities), unless the horses are kept as livestock or the land is used solely for grazing of horses.

Where horses are kept on land for breeding, planning permission is necessary for the change of use of the land. If horse breeding takes place where the horses are used in farming the land, then planning permission will not be required.

With reference to Part 6 of the GPDO 2015 (Agricultural and Forestry) and Part 6 of the GPDO 1995 (Agricultural Buildings and operations), it does not follow that the grazing of horses and ponies on agricultural land qualifies the land for the exercise of permitted development rights because of the further requirement, in both GPDO 2015 and GPDO 1995, that the agricultural use should be for the purposes of a trade or business. For more information on permitted development rights see section 8 below.

## 6. When is planning permission required?

Structures and operations connected with horses do not enjoy permitted development rights associated with agricultural buildings, except in the unusual circumstances of such buildings or works being required for work horses or horses kept for meat in accordance with the definition of agriculture at section 336 of the 1990 Act.

Planning permission will be required in the following circumstances:

1. Keeping horses on agricultural land
2. Equestrian activities on agricultural land – e.g. habitual use for exercise and training, riding schools and equestrian centres etc
3. Breeding of horses on agricultural land, as in the case of a stud farm
4. Racing stables
5. The building of stables, indoor/outdoor riding areas, permanent jumps, race horse gallops, polo pitches, toll rides, lighting columns, hardstanding and other permanent structures related to equestrian activities (this list is not exhaustive)
6. Conversion of redundant farm buildings to equestrian use

(This list is not exhaustive).

## 7. "Mobile" Field Shelters

In the case of moveable structures i.e. "mobile" field shelters, subsequent Appeal decisions (since *Sykes v SoS for Environment 1981*) have generally held that as these structures are not buildings falling under the definition of 'development' (see Section 2 above) as long as their use is ancillary to horse ***grazing***. This means that, in theory, there is no requirement to obtain planning permission for them or prior approval from the local planning authority. But the "mobile" field shelter must not be permanently fixed to the ground, must be easily moveable and must allow the animal free access in and out of the shelter i.e. no stable doors/barriers to be fitted and no water or electricity connections either.

It may be asserted that mobile field shelters are chattels and therefore, usually do not require planning permission. But this depends on size of the mobile shelter, degree of permanence (i.e. how long it remains in one position) and degree of attachment to the land (i.e. how is it fixed to the ground).

Planning authorities will generally accept only one "mobile" field shelter per field and it must be moved regularly to new locations in the field if you are to demonstrate that it is mobile.

However, the use of a field **to keep** horses usually requires planning permission, and, therefore, "mobile" field shelters associated with **keeping** horses can be controlled by conditions of the planning permission.

## 8. What permitted development rights exist?

'Permitted development' is development which has been granted express planning permission by Government through Schedule 2 of:

- England - The Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO 2015) applies in England http://www.legislation.gov.uk/uksi/2015/596/made; and

- Wales - The Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO 1995) applies in Wales http://www.legislation.gov.uk/uksi/1995/418/contents/made

Members are reminded that permitted development rights can be made subject to conditions, and permitted development rights can be withdrawn by a condition on a planning permission or by an Article 4 Direction imposed by a local planning authority. (CLA guidance notes are available).

**N.B.** Before going ahead with the use of permitted development rights it is always worth checking that your property benefits from permitted development rights.

### 8.1 Development within the curtilage of a dwelling house - Part 1 Class E England - GPDO 2015 and Wales - GPDO 1995

This section confers the right to use any building or other land within the curtilage of a dwelling house for any purpose incidental[1] to the enjoyment of the dwelling house as such. This covers not only the use of buildings, but also other incidental activities not in themselves constituting development, such as the storage of a horse box, but not the storage of a commercial vehicle.

Stables and other horse-related developments that are to be erected within the curtilage of a dwelling must abide by limitations set out in the GPDO 2015 or GPDO 1995, Part 1 Class E. Members are asked to check closely the relevant regulations directly for the exact conditions and limitations that apply in both sets of regulations. The links to both sets of regulations can be found above.

If any of the land within the curtilage of the dwelling house is situated in a National Park, Area of Outstanding Natural Beauty, the Broads or World Heritage Site, then development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwelling house would exceed 10 square metres.

In the case of any land within the curtilage of the dwelling house which is Article 2(3) land (GPDO 2015) or Article 1(5) land (GPDO 1995) development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall

[1] Incidental purposes are regarded as those connected with the running of the dwelling-house or with the domestic or leisure activities of the persons living in the dwelling-house i.e. for personal use. If there is a change of use of the equestrian development from a domestic use to some type of commercial use (e.g. DIY or full livery, provision of riding lessons etc) this will constitute a change of use from domestic use to commercial use and will require planning permission.

forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

Article 2(3) land and Article 1(5) land means Conservation Area, Area of outstanding natural beauty, a National Park, the Broads, World Heritage Site.

Further details and interpretation of Part 1 Class E can be found in

1. England - the Communities and Local Government technical guidance (January 2013) and the link is below:
http://www.planningportal.gov.uk/uploads/100806_PDforhouseholders_TechnicalGuidance.pdf
and
2. Wales – Technical Advice Note 6 Planning for Sustainable Rural Communities
http://gov.wales/topics/planning/policy/tans/tan6/?lang=en

It is strongly recommended that the approriate guidance is given due consideration before undertaking any works.

## 8.2 Temporary uses of land - Part 4 Class B - England - GPDO 2015 and Wales - GPDO 1995

This class permits the temporary use of open land for between 14 and 28 days in any calendar year. The temporary use of agricultural land for non-agricultural purposes is particularly useful for non-agricultural diversification-type activities such as equine activities e.g. for cross country events, gymkhanas etc.

There are some conditions and limitations which are as follows:

*Certain temporary uses are excluded altogether by Class B and these are:*

- *Where the land to be utilised is a building, or within the curtilage of a building.*
- *The use of the land is for a caravan site.*
- *The land is within, or part of, a Site of Special Scientific Interest and the intended use would be for motor sports, clay pigeon shooting or any 'war games' (excluding any formal military activity).*
- *The use of the land is for the display of an advertisement.*

The sorts of temporary events that could be held under the 28 day rule include gymkhanas, cross country events, allowing the hunt to exercise hounds, Pony Club events, eventing, jumps in fields, horse and dog shows etc (this is not an exhaustive list). The period is reduced to 14 days for markets (including car boot sales), motor vehicles and motor cycle racing, speed trials and associated practising.

But, under Part 4, these non-agricultural activities can only be carried out on the land for no more than 28 or 14 days per calendar year, depending on the type of activity. It is important to note that the 28 days are cumulative; it is not possible to have, for example, 27 days of one use and 28 days of another use or 14 days of one use and 28 days of another use. If non-agricultural activities are carried out for more than 28 or 14 days per calendar year (depending

on activity type) then a material change of use occurs and planning permission is required to change the use of the land from agriculture to the new use.

**Planning Unit**
Questions often arise about what is the 'planning unit'. Although it may not always be the case, the use of the Part 4 Class B permitted development rights is usually taken to relate to land within a single planning unit, that is, within a single definable land holding for planning purposes. So, for example, moving an equine event around different fields of an agricultural holding, every 28 or 14 days, respectively, will not overcome the limitations.

**Practical note**
Any temporary jumps, buildings, bins or other paraphernalia, associated with a temporary use of the land, which are left on the land, will be counted as part of the eligible days. If you want to avoid using up eligible days these items should only be placed on the land on those days the land is being used for a temporary use and removed immediately the temporary use ceases.

Constructing and retaining a temporary hard standing for a temporary use of land will also be counted as part of the eligible days. A hard standing that is permanent (even though its use may be temporary) will require planning permission.

A CLA guidance note is available on GPDO 2015 Part 4.

### 8.3 Agricultural permitted development rights – Part 6 Agricultural buildings and operations
### England - GPDO 2015 and Wales - GPDO 1995

As already set out above, permitted development rights under Part 6 apply only where a horse is bred or kept for use on the agricultural holding, and where a horse is being raised for the horsemeat market.

Permitted development regulation under Part 6 is subject to a raft of conditions and limitations on size, height, distance from roads and other buildings etc. A CLA guidance note is available which summarises Part 6 but members are strongly advised to consult the relevant regulations.

### 8.4 Renewable Energy
### England - GPDO 2015 Part 14 Renewable Energy and Wales - GPDO 1995 Part 43 Installation of non-domestic microgeneration equipment

You may wish to consider permitted developments rights under GPDO 2015 Part 14 (England) or GPDO 1995 Part 43 in Wales which allow the installation of micro-generation equipment on non-domestic buildings, in particular solar panels on non-domestic roofs. A CLA guidance note is available that explains these permitted development rights in more detail.

## 9. Immunity from Enforcement – Certificate of Lawful Existing Use

If development is undertaken in breach of planning regulation then it is possible that enforcement action may be taken against the unauthorised development.

However, there is a mechanism available that may assist in regularising the breach which is a **Certificate of Lawful Existing Use.**

The effect of a Certificate of Lawful Existing Use (CLEU) is to grant immunity from enforcement action for a use or development which has existed for a certain period of time. The procedure enables anyone to apply to the local planning authority to determine whether an existing development, use of land, or any other matter relating to a failure to comply with a condition or limitation on development, is lawful.

Regulations provide that certain time limits shall apply for local authorities to take enforcement action in respect of breaches of planning control.

Thus, in respect of **operational development** (see Section 2 above for the definition of development)**,** no enforcement action can be taken after a period of **four years** has elapsed since the development was substantially completed. Thus, for example if the conversion of an agricultural building to say stables or an indoor riding arena, takes place without planning permission, and the conversion works come within the definition of operational development, then after a period of four years since the development was completed, the local planning authority cannot take any enforcement action against the unauthorised development.

In respect of **any other breach** of planning control (including change of use, breach of condition where that does not relate to use as a single dwelling house) no enforcement action can be taken after a period of **10 years** has elapsed, commencing from the date of the breach. Thus, for example, if horses have been kept or exercised on agricultural land continuously for say 365 days per annum for more than 10 years, provided there is sufficient proof to demonstrate this change of use, then in theory, no enforcement action can be taken.

Both matters can be regularised by an application for a certificate of lawful existing use (CLEU). A CLA guidance note is available on CLEU.

## 10. Concealed development

Planning law exists for new development that is deliberately concealed and which will be dealt with through the Magistrates Court who will be able to issue planning enforcement orders that will require the concealed development be demolished. In this instance the four year and ten year rules would not apply, nor would the ability to apply for a CLEU.

## 11. Planning policy and decision-making

Planning policy sets out how the legislation is supposed to be applied in practice. Decisions on planning applications (and appeals) concerning horse-related development are made by planning authorities in accordance with:

- planning legislation set out in the 1990 Act and secondary legislation
- National planning policy for England or Wales and associated guidance
- Development (or local) plan policies

## 11.1 National planning policy

National planning policies upon which applications are assessed differ between England and Wales.

- **England**

National planning policy is set out in the National Planning Policy Framework (NPPF) published on 27 March 2012. The NPPF is a key document in determining whether you will obtain planning permission for equestrian development. It is important to note that the NPPF needs to be read as a whole, in other words the contents from cover to cover apply to all planning applications. The NPPF contains some useful policies for development in the countryside and it cannot be stressed too strongly that the entire document can apply to any development so it is worth reading the whole thing. The NPPF can be found on the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

The NPPF is underpinned by government guidance set out in on-line National Planning Practice Guidance which can be found on the following link:
http://planningguidance.planningportal.gov.uk/

- **Wales**

In Wales, national planning policy is set out Planning Policy Wales and, as far as rural development is concerned, the key guidance document is Technical Advice Note 6 – Agricultural and Rural Development (TAN6). Links to both documents are set out below.

- **Planning Policy Wales**

http://wales.gov.uk/docs/desh/publications/121107ppwedition5en.pdf

- **Technical Advice Note 6 – Agricultural and Rural Development (TAN6)**

TAN6 will be of most relevance to equine development proposals. The policies relating to development associated with horses is set out at para 6.11 and will be taken into account by planning authorities when determining planning applications for equine development proposals.
http://wales.gov.uk/topics/planning/policy/tans/tan6/?lang=en

## 11.2 Local (Development) plan

It is important to remember that the planning system is 'plan-led' and therefore planning decisions must accord with the policies set out in the development plan i.e. the local plan drawn up by the district, borough, unitary authority "unless material considerations indicate otherwise" (see NPPF 150-198 and Annex 1). It is therefore very important to check the development management policies which will be set out in the local (development) plan.

In England, the development plan is made up of the local planning authority's adopted core strategy and/or local plan, development management plan and any neighbourhood plans that have been adopted. It is also worth checking to see if the local planning authority has issued a supplementary planning document in respect of equestrian development in their area. For national planning policy on local plans, see NPPF paras 150-198.

In Wales local planning policies will be found in the local planning authority's Local Development Plan.

It may also be worth checking whether the local authority has issued any Supplementary Planning Document related to equestrian matters.

## 12. Planning decisions

Each planning application is considered on its own merits and material planning considerations s such as the proposed location, environmental impact, traffic generation etc will be taken into account. In doing so, the view of other parties who might be affected will also be taken into consideration.

If an applicant's planning application does not entirely coincide with national and/or local planning policy, it is up to the applicant to justify why there are other material considerations that the planning authority should take into account in their decision making.

Material considerations are factors which will be taken into account in reaching a decision on a planning application or appeal. Apart from, the ones already listed above, these can also include issues regarding traffic, wildlife, economic and environmental impacts and the historical interest of the area. Issues such as loss of a view or effect on property values are not material considerations. The NPPF is one of those material considerations (a CLA guidance note provides an indicative list of what are material considerations).

In practice Government planning policy is often the most important material consideration other than the development plan (local plan and any adopted neighbourhood plans). Government policy may also override the development plan if the development plan is out-of-date, non-compliant with national planning policy or it contains indeterminate policy.

## 13. Non-domestic rates

Members should note that non-domestic rates may be payable on stables and fields used for equestrian purposes (even if their use is private) which are outside the curtilage of the dwelling house, and also for commercial equestrian businesses.

## 14. Capital Taxation

All farm-based diversification will have capital and income tax implications. If in doubt please contact the CLA's Taxation department.

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