

Business Clinic

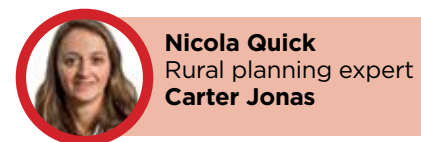
Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly's* experts can help



A suitable existing building, such as a barn, could be an option for conversion

What are planning laws for building workers' housing?

Q Our equine business is expanding and we are looking to recruit another full-time member of staff. We do not have any suitable accommodation, so are thinking of developing. Can we apply for planning permission for a normal residential dwelling, or do different rules apply?



Nicola Quick
Rural planning expert
Carter Jonas

A We assume you already live on site and require a second dwelling as the business has expanded. In line with the National Planning Policy Framework, planning policies and decisions aim to avoid the development of isolated homes in the countryside except in certain circumstances.

One of these exceptions is if "there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside."

However, you will need to meet certain criteria to prove that you have a genuine requirement for the dwelling. The same principles apply whether the accommodation is for an equestrian or an agricultural worker.

To prove that you meet these criteria, a planning application would need to include an agricultural or equestrian appraisal, alongside the application forms and plans or drawings. Your local authority may also require additional documentation.

Functional and financial tests

This appraisal is essentially a review of the business, and is comprised of two key tests – the functional test and the financial test.

The functional test assesses whether there is a genuine need to have an additional member of staff living on-site (and therefore within sight and sound of the equine yard) on a full-time, year-round basis for animal welfare and/or security etc.

It is based on a system of Standard Man Days (known as the SMD system). A person is expected to work at least 278 SMDs or 2,225 hours of labour a year.

To justify a second dwelling and assuming one person is already fulfilling the above requirement, you would need to be looking at a total number of days or hours at double this level to pass the functional test. Consideration would be given for holidays, sick days and time not working.

I would recommend a professional produces the appraisal, even if you do the rest. There are industry standard figures for each sector. To undertake a quick check that you'd meet the required level, they'd just need acreage and a breakdown of number of animals, including

full livery, part livery and activities such as breaking and training and so on.

Viability

The financial test is about assessing the viability of the business, making sure it can continue to produce a sufficient profit to retain the new member of staff in the long run.

This aspect of the test would be carried out with the help of an accountant, based on three years of accounts and forecasts for two years, for a permanent dwelling. (For new businesses, there are different requirements and you would be likely to be applying for a temporary dwelling in the first instance while the business establishes.)

The application must demonstrate that the business can sustain the worker based on at least minimum wage. I use £20,000 as a minimum profit and then look at the funding for the proposed dwelling separately.

It is key for the two tests to be considered in tandem, so make sure there is good communication from the outset with the planning consultant and the accountant to maximise your chances of success.

In terms of the type of residential dwelling, if there is a suitable barn for conversion this is an option, but often I find all existing buildings are utilised by the business so a new-build dwelling would be more appropriate. Any dwelling would be subject to an occupancy restriction and the size would need to be appropriate.

Is planning permission needed if we want to open a farm shop?

Q We are thinking of setting up a farm shop. Will we need to think about planning permission?



Diana Miller
Solicitor
Thrings

A Yes, you will need to consider if planning permission will be required. However, in some cases the requirement may be avoided. Under the Town and Country Planning Act 1990, planning permission is required for the carrying out on land of any development. Development is defined as the "carrying out of building, engineering, mining or other operation in, on, over or under the land to the making of a material change in the use of buildings or other land".

Use of a pre-existing building

While seeking professional advice is recommended, there are factors which may help you avoid having to acquire planning permission – including ensuring the shop is "ancillary" to your farming enterprise.

In general terms, a farm shop is unlikely to require planning permission provided that there is no planning condition prohibiting its use as a farm shop; it remains subservient to the primary agricultural use; it does not have the character of a "self-contained" retail unit; and the farm shop is ordinarily incidental to the use of the land for agriculture.

In one planning appeal, an inspector noted that piglets reared on site were slaughtered and packed elsewhere prior to sale; this broke the "ancillary" link required to satisfy planning considerations.

Another – *Millington v the Secretary of State for the Environment, Transport and the Regions* (1999) – concerned the production of grapes grown on the farm and whether wine-making was an activity for the purposes of agriculture. The case provided a legal test in respect of "ancillary" and highlighted a number of key factors for consideration:

- Whether the operation could be included in the general term "agriculture"
- Whether it could be considered as ordinarily incidental to, for example, the growing of grapes
- Whether it could be regarded as ancillary to normal farming activities
- Whether it is considered as reasonably necessary to make the product marketable.

If the answers to these questions are yes, it is more likely than not that the use of a pre-existing building as a farm shop will not require planning permission. Much will depend on the circumstances of each unique case.

Home-grown v imported goods

When deciding how and with what to stock your farm shop, consider the levels of imported produce being sold (ie, not reared or grown at the holding). If the sales of the shop are not sufficiently connected to the farm, it may be treated as a free-standing retail unit for the sale of goods; this would be a material change of use requiring planning permission.

The planning judgements of local authorities or planning inspectors have varied on the question of what level of imported produce for farm shops is acceptable or too minor to merit consideration. Many authorities consider 10% acceptable, although 20% is not unknown. Speak to your local planning officers before making any commitments.

The building

Ensure there are no planning conditions preventing the building being used in the manner

you envisage. You may be considering obtaining planning permission or exercising permitted development rights to erect or extend a building to use as a farm shop.

There are differences in the law between England and Wales, and in some cases your permitted development rights may have been limited or removed on your site or more generally. For example, if your building is listed, you are located within a conservation area, national park or an area of outstanding natural beauty. It is advisable to confirm the position before starting any works.

Making a plan

You may want to ask other farm shops what lies behind their success. I also recommend speaking to your council's planning officer, setting out your family's ambitions before listening to the officer's planning considerations. Opening the conversation at an early stage can often lead to better working relationships and save you time and money.

Getting legal advice from a specialist that understands your farming aspirations and commercial needs at an early stage will often prove cost- and time-effective.



Sales from the shop must be sufficiently connected to the farm for it not be treated as a free-standing unit

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email fw-businessclinic@markallengroup.com

Our expert partners

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