All buildings, great

Julie Butler considers how the new permitted development rules may affect claims for main

KEY POINTS

- **What is the issue?**
New building regulations are radical changes and will give farmers and landowners the opportunity to unlock residential value
- **What does it mean to me?**
Ongoing tax planning opportunities for principal private residence relief, need for evidence of permanence
- **What can I take away?**
There are drawbacks to the regulations, eg some do not apply to AONB and national parks

PROFILE

Name Julie Butler FCA
Position Managing Partner
Company Butler & Co Chartered Accountants
Tel 01962 735544
Email j.butler@butler-co.co.uk
Profile Julie Butler is a farm and equine tax specialist. Her articles are published in the national accountancy and tax press and she is the author of *Tax Planning for Farm and Land Diversification*, *Equine Tax Planning* and *Stanley: Taxation of Farmers and Landowners*.

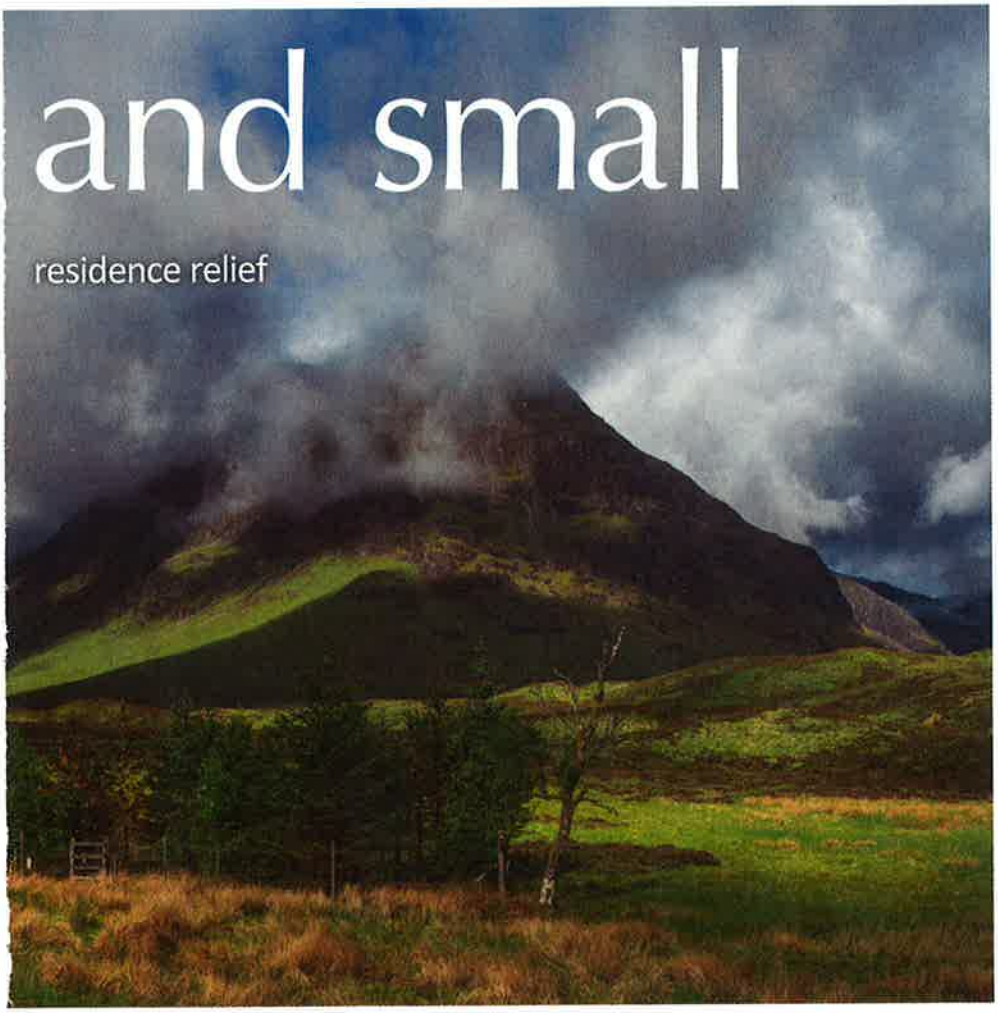
There is no doubt that the new rules regarding permitted development rights (PDR) discussed in the press will unlock residential use for farm buildings. It is considered that this will result in a large number of claims for principal private residence relief (PPR) by farmers to try to develop and sell off more properties. For reasons such as downsizing, or properties changing between generations, farmers and landowners can take advantage of this new ruling, both in terms of property development and PPR.

From 6 April 2014 two new classes of permitted development have been added to the general permitted development order (GPDO). These will provide the opportunity to change the use of existing retail and agricultural buildings into dwellings. Such changes mark a major shift in planning policy that is being welcomed by many landowners and farmers. There will be the potential to unlock significant planning opportunities for rural businesses.

Radical changes to planning permission

The most radical change is the introduction of a new class MB which allows a change of use of agricultural buildings to residential. It also authorises certain building works that are necessary to carry out the conversion. The new class MA allows a change to use as a school or nursery. These changes build on earlier amendments to the GPDO, which allowed changes to office use.

However, the rules are complicated and will not apply in all cases. Amoung exceptions are buildings in areas of outstanding natural beauty and national parks. The biggest downside is that the rules limit the ability to make use of other agricultural permitted development rights on the farmholding, that can be very beneficial. For very forward-thinking farmers who have probably already developed every old barn there is, they would not want to just use the new regulation benefits for a couple of



remaining barns and find out that they are then limited and other agricultural permitted development rights are sacrificed for 10 years.

The PDR only apply to buildings that were solely used for agriculture as part of an established agricultural unit on 20 March 2013. There are limits on the cumulative floor space which can be converted within the agricultural unit (500 square metres for class MA and 450 square metres for class MB). Listed buildings are also excluded, as are buildings within an SSSI and certain other areas. It is still necessary to apply to the council for 'prior approval' in relation to issues such as transport and highways impacts, noise impact, contamination risk and flood risk. The council also has the power to consider the suitability of the location for the proposed use – this subjective test clearly could be used by the council to resist development they consider undesirable.

Principal private residence relief

If PPR for capital gains tax (CGT) is due to be claimed, farming families must then make sure there is evidence of genuine occupancy. A recent case, *Piers Moore v Revenue & Customs* [2013] UKFTT 433 (TC), shows the need for evidence to prove that there is permanent occupation under TCGA 1992 ss 222 and 223. Points that HMRC look at, for example, are post, bank statements and council tax documents. It can be seen in the case of *Moore* that the claim for PPR must be supported by evidence.

In this case, Mr Moore purchased a two-bedroom, semi-detached house with a garage in November 2002. Mr Moore moved into the property in 2006 after matrimonial difficulties with his first wife (Mrs DM). Around March or April 2007 Mr Moore began a relationship with another woman, who became his second wife (Mrs JM). Mr Moore moved out of the property in July 2007 and moved into a second property that he had bought jointly with Mrs JM. The first property was sold on 31 August 2007. HMRC denied Mr Moore's claim for PPR and amended his self-assessment tax return for the year ended 5 April 2008 for CGT in respect of his disposal of the property. Mr Moore appealed against this treatment.

'Residence' under PPR

Mr Moore contended that when he moved into the property, he was not in a relationship with Mrs JM. He was prepared to stay at the property for a considerable period until he had resolved his financial position and could decide on his next home. Mrs DM had placed a restriction on the title of the property which would have prevented its sale. He had paid council tax in respect of his occupation of the property from November 2006 to July 2007. Thus, when he moved in, he intended to live there for an indeterminate period, sufficient to give the necessary expectation of continuity to make his occupation 'residence' for the purposes of ss 222 and 223.

Permanent residence

The First-tier Tribunal (FTT) determined the two-bedroom house was not suitable as a permanent residence for Mr Moore if he were to live there together with his second wife and her two sons. Most importantly, Mr Moore failed to discharge the burden of proving that when he moved in, he did not have an expectation of moving again and setting up a home with his second wife.

The evidence that post was delivered during the relevant period to addresses other than the property, particularly bank statements to Mrs JM's address during the period in question, supported that conclusion. Moreover, Mr Moore was unable to show any bills, other than council tax documentation, recognising his address as the property in the relevant period.

Degree of permanence

The FTT ruled that Mr Moore had never envisaged the property as a long-term home and his occupation lacked the degree of permanence, continuity or expectation of continuity to render such property his 'residence' for the purposes of ss 222 and 223. It would appear Mr Moore was indecisive about his occupation, which gave the tribunal to find that he did 'not dwell permanently or for a considerable time'. On this basis, Mr Moore's appeal was dismissed.

Action plan

There is much tax planning surrounding PPR that farms will be able to undertake with regard to the availability of extra dwellings. This can help achieve IHT advantages, for example, by selling a large farmhouse where the size could jeopardise claiming the character appropriate for agricultural property relief that could have an IHT planning benefit. Smaller dwellings could help the elderly farmer and help the occupation for carers so that they stay on the property. There are numerous IHT and CGT advantages and disadvantages of these new regulations which must be thought through carefully. Where PPR is to be used as a tax planning tool, there must be a degree of permanence.