Wyre Council

Converting an agricultural building to a dwelling (Class Q) - Guidance for Applicants

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Guidance for Applicants and Agents

What is Permitted Development?

Permitted development is development which does not require full planning consent provided that it adheres to certain stipulations and provisions. These provisions are set out within the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The change of use of a building from agricultural use to a dwellinghouse is permitted under Class Q, Part 3 of Schedule 2 of the GPDO. Class Q permitted development covers the change of use and the building operations reasonably necessary to convert the building.

What is a Class Q consent?

As set out above development permitted via Class Q does not need planning permission, but does require a prior approval application. The change of use is still subject to a number of limitations and conditions, all of which must be complied with in order for a development to be allowed.

These conditions include submitting an application for prior approval before beginning a development. This allows the Local Planning Authority to determine whether prior approval is required for the proposal.

Applications for Prior Approval cannot be made retrospectively.

Where Prior Approval is granted or it is determined that Prior Approval is not required the development must adhere to specific conditions set out within the legislation. These are:

- Development under Class Q must be completed within a period of 3 years starting with the date of the decision notice; and
- The development must be carried out, where prior approval is required, in accordance with the details approved by the local planning authority or, where prior approval is not required, in accordance with the details provided in the submission of the application.

Where development is not carried out in accordance with these conditions the resulting dwelling will not benefit from the consent allowed under Class Q and may be subject to enforcement action.

IMPORTANT NOTES:

1. Class Q consents are for the **conversion** of agricultural buildings only. Where changes to the approved works are required it is strongly advised that the Local Planning Authority are contacted prior to those changes being implemented. Works carried out which would not be in line with the approved detail may result in the development not being deemed a conversion and instead deemed a re-build. In such circumstances this would result in the loss of the Class Q consent and the resulting dwelling may be subject to enforcement action.
2. Dwellings which are as a result of a Class Q permission do not subsequently benefit from Permitted Development rights afforded by Part 1 of Schedule 2 of the GPDO. As such any future works to the dwelling, including within its curtilage i.e. detached out-buildings, hardstandings etc. will require planning permission.
3. The domestic curtilage of the resulting dwelling must be in line with the definition set out within Paragraph X of Part 3 of Schedule 2 of the GPDO. Where a curtilage is established that is in excess of that definition then the development would not be considered permitted development and potentially subject to enforcement action. Extensions of domestic curtilage require planning permission and should be formally applied for via the submission of a full planning application.

Requirements the proposal must adhere to in order to be considered Permitted Development

Prior to considering matters of Prior Approval the Local Planning Authority must satisfy itself that the proposal is, in fact, based on the information before it, permitted development.

For a proposal to be considered permitted development it must comply with all requirements set out within paragraph Q.1 of Class Q. Where the proposal fails to comply with any part of these requirements the proposal will not be considered permitted development.

In addition to the above Article 3 'Permitted Development' of the GPDO sets out fundamental provisions that all proposals must adhere to. For proposals under Class Q the most relevant are sub-paragraphs (4), (5) and (9A). These paragraphs set out the following:

Sub-paragraph (4) sets out that nothing in the GPDO permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 (Control of Development) of the Town and Country Planning Act 1990.

- This means where there are existing restrictive planning conditions on the building from previous planning permission the provision in the GPDO do not apply and as such does not benefit from permitted development rights.

Sub-paragraph (5) sets out that the permission granted by Schedule 2 does not apply if:

(a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;

(b) in the case of permission granted in connection with an existing use, that use is unlawful.

- This means where unauthorised building work(s) or use(s) have occurred and are not immune from enforcement action the building does not benefit from permitted development rights.

Sub-paragraph (9A) sets out that Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse:

(a) where the gross internal floor area is less than 37 square metres in size; or

(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

- This means any dwelling(s) proposed under Class Q must meet the above standard in all circumstances. Sub-paragraph (9A) must be read in conjunction with Sub-paragraph (9B) which sets out that the reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it. The above referenced guidance is available online via the gov.uk website.

Paragraph X of Part 3 provides the necessary 'definitions' for the purposes of Part 3. Class Q allows for 'a change of use of a building and any land within its curtilage'. With regards to 'curtilage' Paragraph X, for the purposes of Class Q, defines this as the following:

(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building; or

(b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building;
whichever is the lesser.

Paragraph (W) of Part 3 allows the Local Planning Authority to refuse an application where, in the opinion of the authority that the proposed development does not comply with, or the applicant has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

It is the applicant's responsibility to ensure that all necessary information is provided that would allow the Local Planning Authority to make assessment against all necessary 'permitted development' requirements.

Failure to comply with any of the above, including curtilage definition, would result in the proposal not being considered permitted development and no assessment of Prior Approval matters would be made.

Assessment of Prior Approval matters

Where a proposal is considered to benefit from permitted development rights applications made under the provisions of Class Q are subject to the consideration for the need for Prior Approval. Matters subject to assessment under the Prior Approval process are as follows:

(a) transport and highways impacts of the development;
(b) noise impacts of the development;
(c) contamination risks on the site;
(d) flooding risks on the site;
(e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
(f) the design or external appearance of the building;
(g) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

What is meant by impractical or undesirable for the change to residential use?

Impractical or undesirable are not defined in the regulations, and the Local Planning Authority is required to apply a reasonable approach in making any judgment. Impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".

When considering whether it is appropriate for the change of use to take place in a particular location, the Local Planning Authority starts from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the Local Planning Authority would not normally grant planning permission for a new dwelling (i.e. not supported by Policies within the adopted Wyre Local Plan) is not a sufficient reason for refusing prior approval.

When considering location and siting it is not considered appropriate to apply tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter of the prior approval. As such, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are not considered to be relevant.

However, there will be circumstances where the impact on the resulting dwelling cannot be mitigated. Therefore, when looking at location, the Local Planning Authority may, for example, consider that because an agricultural building on the top of a hill with no road access, power source or other services its conversion is impractical. Additionally, the location of the building whose use would change may be undesirable if it is adjacent to other uses, for example intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

Paragraph W(13) of Part 3 of Schedule 2 of the GPDO does allow the Local Planning Authority to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. When applying this in relation to siting and location it is not considered appropriate to apply conditions that would result in the control or demolition of other buildings not subject of the application. Buildings not subject to a proposed conversion under Class Q would not fall within the application site (i.e. the building subject of the application and its curtilage) and therefore would not be considered reasonably related to the subject matter of the prior approval.

What works are permitted under the Class Q permitted development right for change of use from an agricultural building to residential use?

Rights under Class Q allow for either:

- (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
- (b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

However, the right assumes that the agricultural building is capable of functioning as a dwelling. The right permits building operations which are **reasonably necessary** to convert the building, which may include those which would affect the external appearance of the building and would otherwise require planning permission.

This includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations. It is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. Therefore it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.

Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.

Further advice on the difference between conversions and rebuilding has been set out in case law and can be found in the case of Hibbitt. This can be found online by searching for:

Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin).

When submitting an application which includes building operations it is strongly recommended that details of the level of work(s) to be carried out are provided. This information should be as clear and precise as possible, such as indicating the proposed works in a different colour and/or providing a schedule of works. Where no information is provided and building works are proposed, or where the detail provided is unclear, the application is likely to be refused due to insufficient information, as it would not allow the Local Planning Authority to undertake the necessary assessment as required by the legislation.

Other works outside the scope of Class Q, such as fences, patios, accesses and full demolition of buildings, are not permitted and if proposed will result in the refusal of the application.

All habitable rooms must be provided with adequate natural light

Where the application relates to prior approval as to adequate natural light, the legislation makes clear that the Local Planning Authority **MUST** refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouse(s).

Note: A habitable room is defined in Paragraph X as - any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.

What is the definition of Contaminated Land?

For the purposes of Class Q the prior approval assessment requires the Local Planning Authority to:

> (i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990, and in doing so have regard to the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012, and
> (ii) if they determine that the site will be contaminated land, refuse to give prior approval.

If it is determined that the site will be contaminated land, the legislation requires that prior approval be refused. Therefore, it is advised that sufficient information on this matter be provided with the application, as this matter cannot be resolved through a condition. As contamination is not always obvious and can also be a result of past unknown actions it is advised that a Phase 1 contaminated land assessment is carried out which will help determine whether the land falls within the above threshold and what, if any, mitigation is required.

Other Statutory considerations

Whilst not a Prior Approval matter the Local Planning Authority are required to have consideration to any ecological impacts the proposal would have. As the *Appropriate Authority* for such matters it is the legal responsibility of the Local Planning Authority to carry out this assessment. Where it is considered that the proposal would result in a detrimental impact and those impacts cannot be mitigated through the imposition of conditions the proposal is likely to be refused.

Can a refusal of a Class Q application be appealed?

Yes, where an application under Class Q is refused, for the purposes of section 78 (appeals) of the Town and Country Planning Act 1990, such a refusal is to be treated as a refusal of an application for approval.

Application requirements

Applications for Prior Approval applications are not full planning applications and so the level of information statutorily required is less. However the requirements are clearly set out within Paragraph W of Part 3.

All applications must be accompanied by:

- a written description of the proposed development, which, in relation to development proposed under Class Q of this Part, must include any building or other operations;
- a plan indicating the site and showing the proposed development;

- in relation to development proposed under Class Q, a statement specifying the net increase in dwellinghouses proposed by the development;
- in relation to development proposed under Class Q of this Part, a statement specifying;
    (i) the number of smaller dwellinghouses proposed;
    (ii) the number of larger dwellinghouses proposed;
    (iii) whether previous development has taken place under Class Q within the established agricultural unit and, if so, the number of smaller and larger dwellinghouses developed under Class Q;
- in relation to development proposed under Class Q of this Part, a floor plan indicating the total floor space in square metres of each dwellinghouse, the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses;
- the developer's contact address;
- the developer's email address if the developer is content to receive communications electronically; and
- where the Environment Agency are required to be consulted, a site-specific flood risk assessment.

An application fee must also be paid on submission. The relevant fee can be found on the Planning Portal website using their Fee Calculator.

Failure to provide any of the above would result in the application being considered invalid.

Whilst not statutorily required, as set out above, it is considered the following information useful for the purposes of the application:

- Plan and or statement clearly outlining the amount of physical works to be undertaken;
- Plan indicating the extent of curtilage;
- Statement setting out clearly how the building is in an agricultural use (or was when last in use) and the site formed part of an established agricultural unit;
- Where forming part of a larger agricultural unit a plan indicating proximity of other buildings.
- A Phase 1 desk study on contamination to identify if the site will be contaminated land.
- A Preliminary Phase 1 Ecology report.