



Change of use from agricultural building to dwelling using permitted development rights

The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 'GPDO') permits certain types of development without the need for full planning permission. Such development is known as 'permitted development'. Part 3 of the GPDO permits 'changes of use'. Under this part of the Order, class Q permits the change of use of certain agricultural buildings to dwellings. Limited building operations and demolition works associated with the change of use are also permitted. This is subject to a condition that, before beginning the development, the developer must apply to the Local Planning Authority for a determination as to whether its prior approval is required with regards to certain matters.

We refer to such applications as 'prior approval' applications. See below for details of how to apply and what issues we will consider when deciding the application.

This advice represents our understanding of the procedures and may change in light of planning appeal decisions, case law, Government advice and best practice. For full details regarding these regulations, please refer to the GPDO.

Exclusions

These 'permitted development' rights do not apply in the following areas:*

- Conservation Areas
- Areas of Outstanding Natural Beauty
- Sites of Special Scientific Interest
- Safety Hazard Areas
- Scheduled Monuments or sites
- Listed Buildings (including curtilage listed buildings)

* Other exclusions apply, but are not relevant in North Somerset.

You can check if your site is affected by the above (excluding safety hazards) by using our interactive planning map.

There are a number of other conditions, limitations and restrictions, which are set out below.

The agricultural building

The building and land must be part of an established agricultural unit and must have been used solely for agriculture in connection with an agricultural trade or business on 20th March 2013, or, if currently unused, must have been last used for those purposes.

If the agricultural use was commenced after 20th March 2013, it must have commenced ten years before any development under Class Q begins.

Development is not permitted under class Q if agricultural permitted development rights have been used on the unit in the last ten years to erect, extend or alter an agricultural building.

Agricultural tenants

If the site is occupied under an agricultural tenancy, express consent from both the landlord and tenant will be required before such development may go ahead.

If an agricultural tenancy over the site has been terminated in order to allow development under these regulations to proceed, and the tenancy is terminated less than one year before the development begins, both the landlord and tenant must agree in writing that the site is no longer required for agricultural use.

Number of dwellings and size limits

No more than five dwellings may be created within an established agricultural unit. Of these, there is a limit of three larger dwellings (defined as being more than 100m², with a cumulative floorspace of not more than 465m²) and five smaller dwellings (defined as having an individual floorspace no larger than 100m²). There can be a mix of larger and smaller dwellings, but the limits of three larger dwellings and five dwellings overall cannot be exceeded. Previous approvals under Class Q are taken into account in these figures.

The curtilage (garden area) should be immediately beside or around the agricultural building and no larger than the land area occupied by the agricultural building.

Building operations and demolition

Building operations are not permitted under class Q if they consist of anything other than the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas and other services to the extent reasonably necessary for the building to function as a dwelling.

A building may not be extended or enlarged beyond its existing external dimensions.

Partial demolition that is reasonably necessary to carry out the above building operations is also permitted. Total demolition and rebuilding is not permitted.

Case Law has established that a proposal must comprise a 'conversion' and not a 'rebuild' to qualify as permitted development under Class Q (*Hibbitt and Another v. Secretary of State for Communities and Local Government and Rushcliffe Borough Council*) [2016] EWHC 2853 (Admin)).

The Government's Planning Practice Guidance cites the above case law and explains that "*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*".

With regards to internal works, the Planning Practice Guidance explains that "*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*".

(Planning Practice Guidance Paragraph: 105 Reference ID: 13-105-20180615)

The regulations and fee structure do not allow for building operations and demolition

to be applied for separately from the change of use. Therefore, if such works are proposed, you should apply for them at the outset and submit all of the necessary details.

Future restrictions on permitted development rights

Where a dwelling has been created under class Q, the regulations restrict future agricultural permitted development rights on the unit. For a period of ten years after the change of use, full planning permission will be required for the erection or extension of agricultural buildings on the unit.

A dwelling created under class Q does not have the benefit of permitted development rights and therefore planning permission will be required for any future extensions or alterations to the dwelling or development within its curtilage.

Other legislative restrictions

These permitted development rights do not apply if the existing building or use are unlawful or if the development would be contrary to a planning condition imposed by a planning permission. This is set out in paragraph 4 of the GPDO.

Matters of prior approval

A prior approval application must be submitted before any works of conversion are carried out. The Local Planning Authority will consider the following:

- Transport and highways impacts
- Noise impacts
- Contamination risk
- Flood risk
- Whether the location and siting of the building makes it otherwise impractical or undesirable to be a dwelling
- The design and external appearance of the building (for changes of use involving building operations)

The Local Planning Authority is required to determine the application in accordance with the National Planning Policy Framework ('the Framework').

We will consider the subject matter as follows:

Transport and highways impacts

The Framework requires that safe and suitable access to a site can be achieved for all people and explains how Local Planning Authorities should set local parking standards.

Any application for prior approval should therefore demonstrate how safe and suitable access to the site can be achieved and where cars will park. The council's parking standards can be found on our website.

Noise impacts

The Framework states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and mitigate and reduce to a minimum other adverse impacts.

If there are any noise sources nearby that may affect the use of the building as a dwelling, you will be required to submit a report setting out the findings of a noise impact assessment. It is advisable in such instances to submit a noise report with your application.

Noise assessments should be prepared by suitably qualified acousticians. They should usually outline the existing noise environment, the potential noise sources from the development, or the noise sources likely to affect the development, together with any mitigation measures proposed.

Further information can be found on our website under Noise Impact Assessments.

Contamination Risk

The Framework requires that a site is suitable for its new use taking account of ground conditions, including pollution arising from previous uses.

Agricultural practices can often give rise to risks of contamination and it is likely therefore that a contamination assessment and report will be required. If you consider there to be any risks from contamination (for example if there are any signs of oil spillages), it is advisable that you commission a contamination survey and report at the outset.

A phase 1 contamination survey will be required. This comprises a Desktop Study, Site Walkover and Preliminary Risk Assessment. This is to provide further information, for example about the history of the site and its surroundings, to enable the Local Planning Authority to fully assess the likely risks of contamination being present.

Further information can be found in the council's advice note entitled Development of potentially contaminated land.

Flood risk

All applications in flood zone 2 or 3 must be accompanied by a site-specific Flood Risk Assessment.

The Framework requires that such assessments demonstrate that the development is appropriately flood resilient and resistant, with safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning. It also gives priority to the use of sustainable drainage systems.

The council is required to consult the Environment Agency on proposals in flood zone 2 or 3 and take into account any comments made by them.

Further advice on this subject is set out in the Flood Risk pages of our website.

Location and siting

The regulations require the Local Planning Authority to consider whether the location and siting of the building makes it otherwise impractical or undesirable for it to change to a dwelling.

The Planning Practice Guidance explains that Local Planning Authorities should apply a reasonable ordinary dictionary meaning in making any judgement as to whether the siting or location of a building is impractical or undesirable – as set out below:

- Impractical reflects that the location and siting would not be ‘sensible or realistic’ – for example where an agricultural building is on the top of a hill with no road access, power source or other services;
- Undesirable reflects that the location and siting would be ‘harmful or objectionable’ – for example where the new dwelling would be sited adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.

Other matters that could give rise to location and siting of the building being deemed impractical or undesirable include where a proposal is considered to have an adverse impact upon the setting of a Listed Building or other Heritage Asset, or to have adverse impacts on protected species or protected trees.

Design and external appearance

The design and external appearance of the building will be considered on those occasions where associated building operations are proposed.

The design and external appearance of the development will be assessed in the context of Section 7 of the Framework - which requires good design in all development. It states that proposals should respond to local character and history and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation, and that they should be visually attractive as a result of good architecture and appropriate landscaping.

Protected Species

Whilst not expressly referred to as one of the prior approval issues for the Local Planning Authority to consider, ecology remains a key factor in the conversion of rural buildings. The DCLG response to consultation regarding these regulations (paragraph 25) indicates that “All changes under permitted development are required to meet necessary habitats and environmental legislation and regulations.”

Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC) requires all public bodies to have regard to biodiversity conservation when carrying out their functions. In the exercise of its functions the council is also required to have regard to the requirements of The Conservation of Habitats and Species Regulations 2010 (as amended) (Habitats Regulations).

The council believes that implications for protected species should be considered as “impacts or risks”. It is also noted that prior approval applications are required to be determined with regard to the requirements of the Framework which also requires decisions to be taken with regard to protected species. Accordingly, the council will require a prior approval application to be accompanied by an appropriate assessment of the potential impact upon protected species and a mitigation strategy if there are protected species at risk of harm from the development.

How to apply

An application form is available on the Planning Portal website.

What you will need to submit

The minimum requirements for a prior approval application are as follows:

- A written description of the proposed development;
- A plan indicating the site and showing the proposed development, which must include any proposed building operations;
- The developer's contact address;
- The developer's email address if content to receive communications electronically;
- A statement specifying the net increase in dwellinghouses (ie the number of dwellinghouses proposed by the development that is additional to the number on site immediately prior to the development);
- A statement specifying the number of 'smaller' and 'larger' dwellinghouses proposed, and those already developed under Class Q.
- A site-specific Flood Risk Assessment where the site falls within flood zone 2 or 3*;
- A fee (£96.00 for change of use only; or £206.00 for change of use with associated building operations)

*In certain circumstances, an FRA is also required in Flood Zone 1. However, this is not currently applicable in North Somerset.

As a minimum, the plan should include the following:

- a site location plan identifying the site - preferably at a scale of 1:2500 and outlining the site in red and showing two named roads; and
- a site layout plan (or 'block plan') showing the proposed development - preferably to a scale of 1:500 or 1:200, showing the building to be converted and any associated demolition, and the building's curtilage (which should be no larger than the land area occupied by the building); and
- existing and proposed plans and elevations (preferably to a scale of 1:50, 1:100 or 1:200) - if building operations are proposed.

Additional information

The regulations allow the Local Planning Authority to request further information in order to assess the risks or impacts of a development, and how these may be mitigated, as well as requiring further details of any operational development.

If there is insufficient information to assess the proposal, the application may be refused. Whilst the council will endeavour to request additional information where this proves necessary, the process is time-limited (56 days) and therefore it will not always be possible to do so. Applicants are advised therefore to submit all relevant information at the outset, including the following:

- A completed application form from the Planning Portal
- A plan showing the entire agricultural unit
- Details of the agricultural trade or business
- Details of any agricultural tenancies and written agreements between tenant and landlord

- Details of access, visibility and parking arrangements
- A noise report - where nearby noise sources may affect the new dwelling
- A contamination report – if there is any risk of past contamination

- Plans and elevations showing any building operations and associated demolition
- Structural survey and method statement – if the structure of the building and its suitability for conversion is likely to be in doubt (such as Dutch barns and glass houses)
- A protected species survey

What happens once an application is submitted

Once we receive your application, we will check to see if the minimum information requirements have been met and, if so, will register the application as a 'valid' application. We will notify you when the application has been registered. Once registered, consultations will be carried out in accordance with the regulations and the application will be assigned a case officer who may visit the site and display a site notice. The case officer will have 8 weeks in which to consider the proposals against the criteria in Class Q. You will receive written notification as to whether prior approval is given or refused before or on expiration of 8 weeks from the date when the 'valid' application was received. Alternatively, the case officer may contact you to ask for your written agreement to extend the period for dealing with the application if, for example, further information or investigation is required.

Conditions of approval

The regulations impose conditions on any development permitted under class Q. The development must be completed within three years and in accordance with the plans and documents submitted to the Local Planning Authority. The council may also impose additional conditions related to the subject matter of prior approval.

Certificate of Lawfulness

The main role of the Local Planning Authority in determining such applications is to consider whether prior approval is required for the subject matter listed above (see 'Matters of prior approval'). Whilst every effort will be made to determine whether a proposal meets the permitted development criteria set out in class Q, the Local Planning Authority may not be able to determine, based upon the information submitted, whether a proposal constitutes 'permitted development' (ie: whether it would be lawful). If you require a formal determination as to whether the proposed development would be lawful, you may apply for a Certificate of Lawful Use.

Further advice

If you require further information regarding this process, or would like to receive advice on a specific proposal, you may apply for formal pre-application advice, using the form on our website. The national Planning Practice Guidance also provides advice on these procedures.