



## Development Management Advice Note – July 2019

### The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Class Q – Agricultural buildings to dwellinghouses

#### 1. Introduction

- 1.1 This advice note should be read in conjunction with [Class Q, Part 3 of the Town and Country Planning \(General Permitted Development\) \(England\) Order 2015 \(the GPDO\)](#) and [amendments to Part 3, Class Q](#), along with paragraphs 104 to 109 of the Planning Practice Guidance on "[When is permission required?](#)". The purpose of this note is to clarify Selby District Council's approach to appraising and determining those matters which are open to a degree of interpretation and has been informed by careful analysis of a number of appeal decisions. Having said this, it should be noted that this is the Council's interpretation of the law and policy in this area and applicants should consider obtaining their own advice.
- 1.2 Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application.
- 1.3 The Government has introduced a permitted development right which allows the change of use of an agricultural building to a dwelling house without requiring the express permission of the local planning authority, subject to a number of criteria being met and certain conditions being satisfied. This provision confirms that the following is permitted development:
- (a) a change of use of a building and any land within its curtilage from a use as agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or*
- (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.*

#### 2. Procedure

- 2.1 Where development is sought under Class Q the applicant must apply to the local planning authority for a determination before development commences as to whether the prior approval of the authority will be required. The first part of this advice note sets out the definition of Class Q and the second section sets out further details on the prior notification procedure for buildings which fall under Class Q and how the Council will assess whether a full planning application is required.
- 2.2 In addition, all building work must comply with the Building Regulations. Further information can be found [here](#).

## **PART 1: DOES THE PROPOSED DEVELOPMENT FALL INTO THE DEFINITION OF CLASS Q?**

### **3. Existing building use**

- 3.1 To qualify for the permitted development right afforded by Class Q, the building must be an agricultural building as defined in the GPDO, which reads as follows:

*A building (excluding a dwellinghouse) used for agriculture and which is so used for the purpose of a trade or business*

- 3.2 Agriculture is further defined by section 336 of the Town and Country Planning Act (1990) as including:

*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 purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agriculture" shall be construed accordingly.*

- 3.3 An agricultural use that is purely recreational, such as the keeping or breeding of animals or the growing of produce undertaken as a hobby, does not qualify. The agricultural use must be a use whereby a person earns a living. Applicants are advised that if the scale of the business or size of the holding is modest, it may be necessary to clarify the extent of the business.
- 3.4 Agricultural-related businesses (for example grain stores), which are not located on agricultural land, would not be eligible for conversion under Class Q.

### **4. Long-term agricultural use**

- 4.1 The permitted development right applies to buildings which have solely been in long-term agricultural use. This means that the building must have been in agricultural use on, or at some date before, 20<sup>th</sup> March 2013. If brought into agricultural use after 20<sup>th</sup> March 2013, then it must have been in agricultural use for at least 10 years (therefore March 2023 at the earliest).
- 4.2 Where a building has not obviously been in long-term agricultural use, the onus is on the applicant to demonstrate that it was so on 20<sup>th</sup> March 2013 or at a time before that date. The building still qualifies if it is no longer used for agricultural purposes, provided it has not been used for any other purpose since ceasing to be used for agriculture (including if that use is unlawful). Therefore a redundant or disused agricultural building does qualify for conversion under Class Q, but this permitted development right is lost if the building has been put to some other use since it ceased to be used for agriculture (including if that use is unlawful).
- 4.3 If the existing use is unlawful then the applicant cannot rely on permitted development rights. The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, expressly excludes permission for a change of use in situations where the existing use is unlawful. Article 3(5)(b) states that "*permission granted by Schedule 2 does not apply if (inter alia) in the case of permission granted in connection with an existing use, that use is unlawful*". The existing use is defined in Article 1 (2) as the use existing immediately prior to the proposed change of use, it is therefore the actual use rather than the historic or notional permitted use that is relevant. This approach to assessing a proposed change of use was recently confirmed in the case of *Noquet v Secretary of State for Communities and Local Government* [2016] EWHC 209.

- 4.4 If a site is not solely in agricultural use it does not benefit from the permitted change of use. A site which forms part of a mixed use of agriculture and (non-agricultural) equine uses or agricultural activities which do not form a trade or business (in the manner of ‘hobby farming’), would not benefit from the permitted change of use
- 4.5 Where the history of a site is complex or ambiguous, it is recommended that a statement setting out the nature of the site’s use and history be submitted as part of the application, which should be accompanied by relevant evidence (e.g. photographic records, dated documents etc.).

## **5. Size thresholds**

- 5.1 The permitted development right allows for a maximum number of the following types of houses:
- up to 3 larger homes, to be greater than 100 sq m each and within an overall floorspace of 465 sq m; or
  - up to 5 smaller homes, no greater than 100 sq m each; or
  - up to 5 homes comprising a mixture of larger and smaller homes, with neither exceeding the thresholds for each type. This means that the maximum cumulative residential floorspace created by Part Q could be 865 sq m (comprising 1 larger dwelling at 465 sq m and 4 smaller dwellings at 100 sq m each). Other combinations of larger and smaller dwellinghouses are possible, but would produce a smaller cumulative total of residential floorspace.
- 5.2 The limits relate to the cumulative number of dwellings created by conversion and to the cumulative total of the floorspace thereby created. These limits refer to the “established agricultural unit” within which the agricultural buildings are located. Subject to the limits above, conversions can be carried out to several different buildings on the same agricultural unit, assuming all other criteria are met. More than one dwelling can be created within each building, subject to the above cumulative limits within the agricultural unit not being exceeded in total. Development proposed under Class Q needs to be considered together with any previous development permitted under Class Q within an established agricultural unit.
- 5.3 When measuring floorspace, Selby District Council will measure floorspace over each floor to the interior face of the external walls. In line with the approach taken by other local authorities, mezzanine floors will be included within the calculation of floorspace.
- 5.4 It is a condition of the revised provisions that applicants specify the number of larger and smaller dwellinghouses being proposed.

## **6. Agricultural tenancies**

- 6.1 The right seeks to protect agricultural tenancies which could be affected where landlords wish to carry out development under the provisions of Class Q. As such, development is not permitted by Class Q under the following circumstances:
- If the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and tenant has been obtained
  - Where a tenancy has been terminated less than one year before an application is made, both the landlord and tenant have to submit in writing that the site is no longer required for agricultural use

## 7. Previous works agreed under Permitted Development Rights

- 7.1 The permitted development right excludes development being permitted where other development has been approved under [Part 6 Class A \(a\) or Class B \(a\) of Part 6 of this legislation](#) (i.e. the erection, extension or alteration of an agricultural building on the established agricultural unit) since 20<sup>th</sup> March 2013, or where development under Class Q begins after March 2023, where previous development has been approved under these provisions in the preceding 10 years.

## 8. Building operations

- 8.1 Development cannot result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point – the envelope of the building must not be enlarged in any way. This will inherently preclude the provision of external features, no matter how small or seemingly incidental, such as chimneys, flues, external cladding or steps. In practice, this means that it will be necessary to apply for planning permission for such features once prior approval has been given, or alternatively to submit a planning application for the conversion in the first instance.

- 8.2 No building operations are covered other than:

- The installation or replacement of windows, doors, roofs or exterior walls; or
- Water, drainage, electricity, gas and other services to the extent reasonably necessary for the building to function as a dwellinghouse.

- 8.3 Partial demolition is permitted to the extent that it is reasonably necessary to facilitate the building operations outlined above. However, demolition cannot subsequently entail the rebuilding of the structure.

- 8.4 Part Q refers to the conversion of agricultural buildings. The interpretation of the term “convert” within Part 3 Class Q of the GPDO was the subject of a High Court judgement (*Hibbitt v Secretary of State for Communities and Local Government [2016]*) which concluded that there is a clear distinction between conversion and rebuilding.

- 8.5 Para 105 of the National Planning Practice Guidance seeks to clarify what building works are permitted:

*The right allows either the change of use (a), or the change of use together with reasonably necessary building operations (b). Building works are allowed under the right permitting agricultural buildings to change to residential use: Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. 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 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 be 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.*

- 8.6 The Planning Practice Guidance also confirms that internal works are not 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.

8.7 Where there is a lack of clarity over whether the building is capable of conversion, the Council will require a report to be submitted which provides clear information on the amount of work required to ensure that the proposal represents conversion rather than re-build.

8.8 In determining whether the works proposed constitute conversion or a re-build, the Council will consider the following (this list is not exhaustive):

- The number of structural interventions which are necessary to facilitate the building's re-use as a dwelling;
- The proportion of the building proposed to be demolished / replaced;
- Whether the building is structurally sound enough to take the loading which comes with the additional works to provide for the residential use;
- The condition of the existing fabric of the building; and
- The nature of the building's foundations and whether they are capable of facilitating the use of the building as a dwelling.

8.9 Examples of schemes where works fall outside Class Q will be where alterations are required to the primary structure of the agricultural building and include:

- The existing structure requires strengthening to enable the safe conversion of the building;
- Additional building works give rise to a need for the strengthening of the existing structure;
- The construction of walls to enclose a largely open sided building to provide supporting walls (e.g. a Dutch barn);
- If only the structural skeleton of the building remains; and
- The nature of the building's foundations and whether they are capable of facilitating the use of the building as a dwelling.

## 9. Other restrictions

9.1 Sites that are on article 2(3) land are excluded from this permitted development right. In Selby District this comprises designated Conservation Areas of which there are 23. Further details, including maps of these areas, can be found on the [Council's website](#). Furthermore, sites that form part of a SSSI, safety hazard area or military explosives storage area are also excluded from the right. A list of designated SSSIs can be found on [Natural England's website](#).

9.2 Also excluded are sites that contain a scheduled ancient monument and buildings which are listed, details of both of which are contained on [Historic England's website](#). If an agricultural building is within the curtilage of a listed building it may be a '*curtilage building*' which is when buildings and structures are deemed to be listed by virtue of being within the curtilage of or associated with a listed building. Curtilage listed buildings and structures are afforded the same protection and restrictions imposed as a listed building with its own listing entry.

9.3 Most built structures / barns have the potential to support roosting bats, barn owls and nesting birds, whilst badgers, great crested newts and wild plants may be present on the land surrounding the building or the proposed development site. Unlike a planning application, ecology and biodiversity considerations are not material to the Council's determining of a prior approval application under Class Q.

9.4 Applicants, however, must comply with the relevant law in respect of Protected Species, including obtaining and complying with the terms and conditions of any licences required

under Part IV of Circular 06/2005 Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System. Many species are protected under conservation legislation such as Natural Environment and Rural Communities (NERC) Act 2006; Wildlife and Countryside Act 1981 (as amended); the Conservation of Habitats and Species Regulations 2010; the Countryside Act 1981 (as amended) and applies to whoever carries out the work.

- 9.5 It is essential that any person envisaging any development works carries out an early assessment to determine whether the proposed works is likely to have an impact on wildlife and biodiversity. If there are any suspicions of an impact on wildlife (including fauna and flora) a survey should be undertaken by a suitably qualified ecologist prior to commencement of any development work. Further information on protected species and as to whether a survey may be required can be found on [Natural England's website](#).

## **10. Residential Curtilage**

- 10.1 The interpretation of Part 3 of the GPDO confirms that for the purposes of Class Q, curtilage means:

- (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 immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

whichever is the lesser.

## **PART 2: The Prior Approval Process**

If it is established that the proposed conversion odes comply with Part Q, then it will be necessary to determine whether prior approval is required for specific elements of the development to determine whether they are acceptable before work can proceed, as set out in [paragraph W of Part 3 of the GPDO](#).

For applications under Class Q (a), the following is required:

1. A completed [application form](#)\*
2. A plan indicating the site and showing the proposed development, outlining the proposed development in red\*. More than one plan may be required to clearly:
  - (i) Show the location of the building (ideally at a scale of 1:1250); and
  - (ii) The extent of the building, and in order to assist the Council in assessing the application, details of any proposed garden, parking, turning and access arrangements (ideally at a scale of 1:500)
3. If within Flood Zone 2 or 3, a site-specific flood risk assessment\*
4. Contaminated Land Screening Assessment form (for one dwelling) or a Phase 1 Contaminated Land Assessment (for more than 1 dwelling). Further details can be found [here](#)
5. £96 application fee\*

For applications under Class Q (a) and (b), the following is required:

1. Points 1-3 of the requirements of Class q (a) above\*
2. Contaminated Land Screening Assessment form (for one dwelling) or a Phase 1 Contaminated Land Assessment (for more than 1 dwelling). Further details can be found [here](#)
3. A written statement detailing the extent of any demolition and building works required to convert the building to a dwelling house
4. Scale drawings of all existing elevations
5. Scale drawings of proposed elevations\*
6. Scale drawings of existing and proposed floor plans\*
7. £206 application fee\*

All drawings and plans should be to a metric scale, normally 1:50 or 1:100.

**Please note** that anything marked with \* above is a statutory requirement to validate the application. There may however be other reports and information required (such as structural appraisals and evidence of agricultural trade) which will need to be considered in the determination process to ensure that the proposed development complies with any conditions, limitations and restrictions specified by Class Q. The absence of relevant information is likely to result in an application being refused.

All applications which create a dwelling or dwellings, will be CIL liable. This does not necessarily mean that they will be CIL chargeable, as often the area of the new dwelling will be less than the area covered by the existing agricultural building. Queries relating to CIL should be directed to [cil@selby.gov.uk](mailto:cil@selby.gov.uk).

The prior approval is in respect of the following:

- a) Transport and highways impact of the development

The Council will normally require any submission to include details of the vehicular means of access to the highway including visibility splays. In addition, details of adequate parking and turning space should be provided.

b) Noise impacts of the development

A dwellinghouse is recognised as being a noise sensitive development. As such, the Council must be satisfied that future occupiers of the dwelling would enjoy a satisfactory level of amenity. Where relevant, any submission should include an assessment of the likely amenity enjoyed by potential occupiers, having specific regard for existing or potential noise sources, e.g. road traffic noise, railway noise, noise arising from an industrial process, noise arising from the continued farming of the remaining site. Equally an assessment will need to be undertaken of the potential impact of residential use on the continued operation of the agricultural business. The level of detail required in an assessment will depend on the sensitivity of the location.

c) Contamination risks on the site

Any submission needs to address contaminated land risks on site and should be accompanied by a Contaminated Land Screening Assessment form (for one dwelling) or a Phase 1 Contaminated Land Assessment (for more than 1 dwelling). Further details can be found [here](#).

Where contamination of the site is considered to be probable or possible, any positive decision may require survey work / mitigation measures to be submitted as part of the prior approval submission or alternatively may be addressed by a condition requiring the professional assessment of the site and if contamination is found, further investigation and the necessary remediation measures.

d) Flooding risks on the site

A flood risk assessment (FRA) should accompany the application where the site is in Flood Zones 2 or 3 (<https://flood-map-for-planning.service.gov.uk/>) or in an area with critical drainage problems. Any FRA will demonstrate that potential occupiers of the site are not placed in undue danger as a result of the site's potential flooding and that safe exit from the site is available in times of flooding.

e) Whether the locational siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to use as a dwelling house

Paragraph 109 of the [Planning Practice Guidance](#) provides clarification on this matter, as follows:

*Impractical or undesirable are not defined in the regulations, and the local planning authority should apply a reasonable ordinary dictionary meaning 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, a local planning authority should start 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 is not a sufficient reason for refusing prior approval.*

*There may, however, be circumstances where the impact cannot be mitigated. Therefore, when looking at location, local planning authorities 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 such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals.*

*When a local authority considers location and siting it should not therefore be applying tests from the National Planning Policy Framework except to the extent these are relevant to the subject matter*



*of the prior approval. So, for example, factors such as whether the property is for a rural worker, or whether the design is of exceptional quality or innovative, are unlikely to be relevant.*

f) The design or external appearance of the building

Developers are reminded that works are only permitted where they are reasonably necessary to facilitate the building's conversion to a dwelling. Any conversion should utilise existing openings and minimise the number of new openings. Where new openings are required they should be appropriately designed so as to reflect the building's character in terms of profile and use of materials.

### **Timescales**

Assuming that the Council decides that prior approval is required, the Council has 56 days to consider the proposals against the criteria in Class Q, unless an Extension of Time is agreed in writing between Selby District Council and the applicant. The 56-day period commences on the day immediately following the day on which either a valid application is received or all required information has been received.

If prior approval is granted under Class Q, development must be completed (not started) within 3 years starting with the prior approval date. This means that the building must either be occupied as a residence by that date or, at the very least, must be ready for immediate occupation. It is not possible for the Council to alter the effect of this by any conditions it attaches to the prior approval decision.

### **Further Information**

Further information can be found on the [Council's website](#) or by emailing [developmentmanagement@selby.gov.uk](mailto:developmentmanagement@selby.gov.uk)