

Technical Guidance Note

Conversion of Agricultural buildings to dwellings under permitted development - Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Introduction

The change of use of a building represents development in planning law. There are provisions in planning legislation which allow for specified development to be undertaken without express planning permission. This is known as permitted development. 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 on the local planning authority, subject to a number of criteria being met and certain conditions being satisfied. This provision is set out in Class Q, Part 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Class Q (the original 2015 version and recent 2018 amendment) is available to view in full at the following links:

<http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/part/3/crossheading/class-q-agricultural-buildings-to-dwellinghouses/made>

<http://www.legislation.gov.uk/ukxi/2018/343/made>

Whilst Class Q is a prescriptive document and the local planning authority do not have the ability to exercise discretion over its statutory provisions, there are a number of matters which have proven difficult to interpret and/or have lacked clarity. The government have sought to overcome this issue through the publicising of guidance found at paragraphs 104-109 of the following link:

<https://www.gov.uk/guidance/when-is-permission-required#What-are-permitted-development-rights>

Government guidance together with this guidance document may be the subject of review and should be read in tandem with the legislation itself. Most parts of Class Q are definitive and self-explanatory. This guidance note seeks to provide assistance to applicants in relation to the general provisions of Class Q and also to clarify Herefordshire Council's approach to appraising and determining those matters which have been open to a degree of misunderstanding or interpretation. The guidance note has been informed by careful analysis of a number of appeal decisions.

Existing building use

To qualify for the permitted development rights afforded by Class Q, the building must be an Agricultural Building as defined in the General Permitted Development Order which reads as follows:

A building (excluding a dwellinghouse) used for agriculture¹ and which is so used for the purposes of a trade or business.

This definition also applies to the term 'Agricultural Use'. Therefore this does not include an agricultural use that is purely recreational such as where the keeping or breeding of animals or the growing of produce is undertaken as a hobby. It is essentially a use whereby a person earns a living. The definition also expressly excludes equine activities unless in very specific cases, horses are kept for agricultural purposes. Applicants are advised that if the scale of the business or size of the holding are modest, it may be necessary to clarify the extent of the business.

Criterion (a) of Part Q.1 requires that the site² is solely used for an agricultural use as defined above as part of an established agricultural unit³:

- i. On March 2013; or*
- ii. In the case of a building which was in use before that date but was not in use on that date when it was last in use; or*
- iii. In the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q beings.*

Where a building has not obviously been in long-term agricultural use at the time an application is submitted, the onus is on the applicant to demonstrate that it was so on March 2013 or at a time before that date. Furthermore, it will not inherently follow that current agricultural use will qualify that building for the permitted development rights afforded by Class Q if that use did not commence before March 2013. Herefordshire Council, where necessary, will seek evidence as to compliance with this requirement and where there is continuing doubt will refuse prior approval.

Quantitative Thresholds and measurements

The 2018 amendment to Class Q now makes a distinction between larger and smaller dwellinghouses, prescribing the following restrictions:

Larger Dwellinghouses (anything exceeding 100 square metres in floor area)

The cumulative floorspace of the existing building or buildings changing use to a larger dwellinghouse(s) within an established agricultural unit shall not exceed 465 square metres and the cumulative number of separate larger dwellinghouses developed under Class Q on that agricultural unit must not exceed 3 units.

Smaller Dwellinghouses (anything up to 100 square metres in area)

The cumulative floorspace of the existing building or buildings changing use to a smaller dwellinghouse(s); or a combination of larger and smaller dwellinghouses within an established agricultural unit shall not exceed 465 square metres and the cumulative number of separate dwellinghouses developed under Class Q on that agricultural unit must not exceed 5 units.

It is a condition of the revised provisions that applicants specify the number of larger and smaller dwellinghouses being proposed

When considering floor space, Herefordshire Council will measure that floor space in the manner prescribed by the RICS which is available at the following link:

<http://www.rics.org/uk/knowledge/bcis/about-bcis/forms-and-documents/gross-internal-floor-area-gifa-and-ipms-for-offices/>

In brief, Herefordshire Council will measure floorspace as being the footprint of the building minus the thickness of the external walls, or in other words over each floor of the building, to the internal face of the exterior walls.

Restrictions

Criteria (d) and (e) are again self-explanatory seeking to safeguard agricultural tenancies⁴ which could be affected where Landlords wish to carryout development under the provisions of Class Q. Protection is provided in the following manner:

- If the site is under an agricultural tenancy express consent from both the landlord and tenant will be required before an application for prior notification can be submitted; and
- Development under Class Q cannot be carried out where a tenancy has been terminated less than one year before an application for prior notification is made unless both the landlord and tenant have agreed in writing that the site is no longer required for agricultural use.

Criterion (f) precludes development from being permitted where other development approved under Part 6 of this legislation has taken place on the agricultural unit since 20th March 2013; or where development under Class Q would begin after 20th March 2023 and where development under Part 6 of the Town and Country Planning (General Permitted Development)(England) Order 2015 – Agriculture and forestry (http://www.legislation.gov.uk/ukxi/2015/596/pdfs/ukxi_20150596_en.pdf) has taken place in the preceding 10 years.

Criteria (j,k,l & m) specifically exclude development under this part in the following areas:

- Area of Outstanding Natural Beauty;
- A conservation area;
- An area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
- Sites for Special Scientific Interest;
- A safety hazard area;
- A military explosives storage area;
- Where the site is or contains a scheduled ancient monument; and
- A listed building⁵.

Building Operations

Firstly, it is important to establish that the procedure relates to the “conversion” of agricultural buildings. This has most recently been considered by the High Court (*Hibbitt v Secretary of State for Communities and Local Government [2016]*). This has established that there is a clear distinction between conversion and rebuilding and in applying the principles of this judgment, Herefordshire Council will assess proposals involving significant new building works to fall outside the scope of Class Q.

Criterion (i) lists a wide spectrum of alterations permissible by Class Q, it is based upon the premise that the extent of the works are limited to those reasonably necessary for the building to function as a dwellinghouse, limited to the installation or replacement of:

- Windows, doors, roofs or exterior walls; or
- Water, drainage, gas or other services.

Partial demolition is permissible to the extent reasonably necessary to facilitate works those listed above but cannot subsequently entail the rebuilding of the structure.

This term was previously been open to a variety of interpretations and the government have sought to rationalise and clarify the matter by publishing advice in the National Planning Policy Guidance at paragraph 105 which states:

Building works are allowed under the change to residential use. The permitted development right under Class Q assumes that the agricultural building is capable of functioning as a dwelling. However, it recognises that for the building to function as a dwelling some building operations which would affect the external appearance of the building, which would otherwise require planning permission, should be permitted. The right allows for 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 include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right.

An addition to paragraph 105 was introduced in February 2018 with particular reference to internal works:

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.

A structural element, as referred to in the guidance above, is not defined under any planning legislation or published advice. However, and in order to ensure a consistent approach, Herefordshire Council will rely on the following definition of an element:

A part of a structure which cannot be broken down into further parts of different kinds, for example a column or beam.

Any development which comprises a new structural elements(s) as defined above will only be permissible under Class Q where it can be clearly demonstrated that the new structural element does not take the loading of any external part of the building. For example, the scheme would not qualify where the following applies:

- *Where the existing structure requires strengthening to enable the safe conversion of the building or;*
- *Where additional building works give rise to a need for the strengthening of the existing structure*

It is not possible to provide an exhaustive list but following the latest revision to the guidance, some typical examples of situations where works fall outside the provisions of Class Q are:

- *the replacement of the roof where that requires the strengthening of the existing structure*
- *having regard to Hibbitt v Secretary of State for Communities and Local Government [2016], the construction of walls to enclose a largely open sided building (e.g. a Dutch or pole barn*

Herefordshire Council will seek to refine this list on the basis of new guidance, cases and decisions that come forward but, notwithstanding the examples referred to above, in a number of circumstances, the need for new structural elements for the building will be unclear. In such cases the Council will expect an application to be accompanied by a full and detailed structural report, undertaken by a suitably qualified person, which confirms that the existing building is both capable of conversion without the provision of new structural elements. It is important to note that this would generally exceed the scope of a survey required by criteria 4 of policy RA5 of the Herefordshire Local Plan Core Strategy to confirm that the building can be converted without substantial reconstruction in that the conversion works themselves, including internal works, need to be assessed to establish whether they include the provision of any structural elements. Potential applicants are reminded that the onus is upon them to demonstrate conformity with the provisions of the legislation and if it can be established that new structural elements are required this will be grounds for the refusal of prior approval.

Further to the above, criterion (g) restricts development to the external dimensions of the existing building at any given point. The clarity offered both within the legislation itself and the supporting national guidance provides no scope to breach the existing building's envelope. 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, it would be necessary to apply for planning permission for such features once prior approval had been given, or alternatively to submit a planning application for the conversion in the first instance.

Conditions

Where the development proposed accords with the above permitted development rights, a prior approval procedure still needs to be followed whereby the developer must apply, either separately or simultaneously, to the local planning authority for their prior approval of the development addressing the following:

- a) Transport and highways impacts of the development

The Council will normally require any submission to include an assessment as to the adequacy of the highway network, in terms of design and capacity, together with full details of the vehicular means of access to the highway including visibility splays. In addition details of adequate parking and turning space, which will be based on the number of bedrooms to be provided within the building, should be provided. The Council will be directed by the Herefordshire Council Highway Design Guide in this regard which can be viewed here:

https://www.herefordshire.gov.uk/media/623242/Highways_Design_Guide_for_New_Developments.pdf

b) Noise impacts of the development

A dwellinghouse is recognised as being a noise sensitive development. As such, the Council must be satisfied that potential occupiers of the dwelling would enjoy a satisfactory level of amenity. As a consequence, and 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 part of the site. The level of detail required in an assessment will depend on the sensitivity of the location and it may be advisable to engage with the Council to determine the level of assessment detail required.

c) Contamination risks on the site

Any submission needs to address contaminated land risks on the site. To assist applicants it would be advisable if any submission included completion of the Contaminated Land Pro Forma attached to this guidance as Appendix 1. Where contamination of the site is found 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 may be addressed by a condition requiring the professional assessment of the site and if contamination is found, further investigation and remediation may be required.

d) Flooding risks on the site

An application will be necessarily accompanied by a flood risk assessment ('FRA') where the development site is within Flood Zone 2 or Flood Zone 3 as defined by the Environment Agency. Flood maps are available at the Environment Agency's website. Similarly, development which is in Flood Zone 1 which is susceptible to flooding from non-fluvial sources, for example due to surface water, will also require an FRA. Any FRA will demonstrate that potential occupiers of the site are not placed in undue danger as a result of the sites 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

The National Planning Policy Guidance addresses this in detail 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.

In such circumstances where there is potential incompatibility, it may be appropriate to consider restricting the uses of other agricultural buildings to less intrusive storage type uses.

f) The design or external appearance of the building

The Council will require that any submission is of a design and appearance which reflects and upholds the inherently agricultural and rural character of a buildings setting. Developers are reminded that works are only permitted where they are reasonably necessary to facilitate the buildings conversion to a dwelling. It is not the aim of these permitted development rights to allow the domestication of the countryside. 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 buildings character in terms of profile and material use. Where the building or its features are of historic or architectural interest, the proposed development will be expected to uphold the character. External materials to be used will be expected to reflect the agricultural appearance of the building in all cases. It will not always be obvious what materials are suitable and in such cases it may be appropriate to engage with the Council to clarify this.

Herefordshire Council are instructed to appraise the development in the context of the above six conditions as if it were a planning application having regard for the National Planning Policy Framework. It will not always be necessary to support Class Q submissions with technical reports and the need or otherwise and the level of information required to consider a submission can be considered by making use of the Councils Pre-Application advice service (see link below).

Other matters

Unlike a planning application, ecology and biodiversity considerations are not material to the Council's determining of a prior approval application under Class Q. However, anyone wishing to undertake such development must be aware of other legislation which may limit or restrict works.

Further advice on these matters can be found on Natural England's website:

<https://www.gov.uk/government/organisations/natural-england>

In any case where a developer wishes to convert a rural building to a dwelling house be it a Class Q or planning application, one is encouraged to engage with the Council in pre-application advice to establish:

1. The likely acceptability of the proposed scheme;
2. Alterations which may be necessary to achieve a favourable outcome;
3. The most appropriate process to follow; and
4. Information which may be required under that procedure.

It has become clear that the Class Q approach, whilst intended to make the process simpler for qualifying buildings, is not always the most appropriate procedure. The Council can offer advice on both the appropriateness of the procedure and the merits of a proposal through the pre-application advice service, the details of can be found here:

<https://www.herefordshire.gov.uk/planning-and-building-control/development-control/get-help-making-a-planning-application>

This document is intended to provide applicants and their representatives with a clearer understanding of Herefordshire Council's approach to Class Q prior approval submissions. It has been prepared having regard to Government guidance and an assessment of some key appeal decisions both within the County and nationally. The document will be reviewed and updated to reflect any changes in guidance or procedure.

¹ 'Agriculture' is 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 "agricultural" shall be construed accordingly'.

² 'Site' is defined by paragraph X of part 3 of the Town and Country Planning (General Permitted Development) Order 2015 as 'the building and any land within its curtilage'.

³ An 'Agricultural Unit' is defined by paragraph X of part 3 of the Town and Country Planning (General Permitted Development) Order 2015 'agricultural land occupied as a unit for the purposes of Agriculture' but excluding parcels of land which are put to agricultural use but do not form part of an agricultural unit overall.

⁴ 'Agricultural Tenancy' is defined by paragraph X of part 3 of the Town and Country Planning (General Permitted Development) Order 2015 as 'A tenancy under either the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995.

⁵ A listed building is not only one statutorily listed by Historic England, but also includes every building which stood within that buildings curtilage on 1st July 1948.