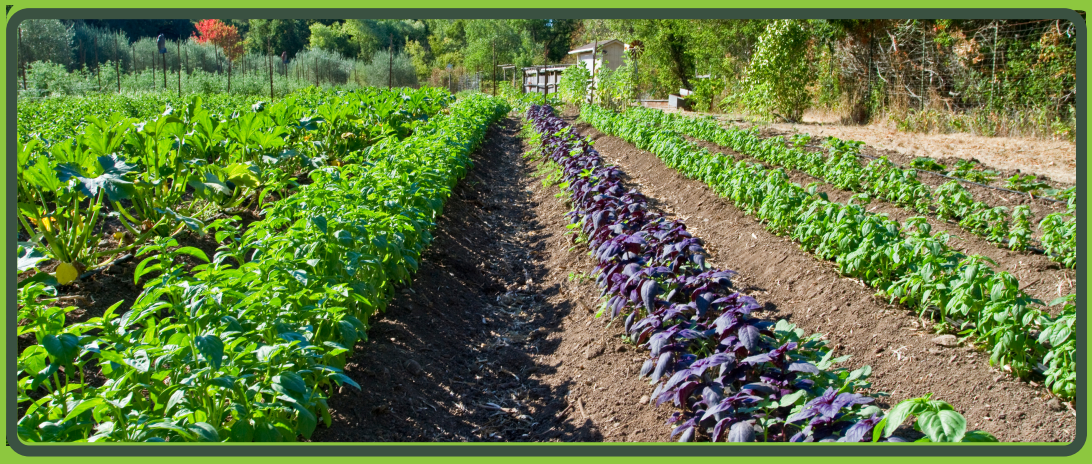
Social Farms & Gardens
Ffermydd a Gerddi Cymdeithasol

Advice for food growers (commercial and community) (Wales Only)
Do I need Planning Permission?



Community Land Advisory Service
Gwasanaeth Cynghori Ar Dir Cymunedol

Ariennir gan Lywodraeth Cymru
Funded by Welsh Government

Advice for food growers (commercial and community) (Wales Only)
Do I need Planning Permission?

The contents of this factsheet are intended for general information purposes only and should not be relied upon nor used as a substitute for planning advice from the relevant local planning authority[1]. You should always consult with your local planning department as to whether your scheme needs planning permission before you start any works.

Whether you need to submit a planning application for the works you want to carry out is dependent initially, on whether the works amount to 'development' and then secondly, whether the works are in a class of 'permitted development' which provide an automatic grant of planning permission so that a formal planning application is not required.

What is Development?

Development is defined under the 1990 Town and Country Planning Act as "the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land."

The starting point is to assume all buildings and engineering operations require a planning application to be submitted to the local planning authority.

Structures

For the purposes of horticulture, this translates to the fact that, the erection or demolition of any structures such as sheds, polytunnels and compost toilets could need a planning application submission.

Demolition

A ruling in 2011 by the Court of Appeal[2] now means that the only forms of demolition that are exempt from needing planning permission are;

1. the demolition of any building with a cubic content not exceeding 50 cubic metres, and
2. the whole or part of any gate, fence, wall or other means of enclosure (except in a conservation area).

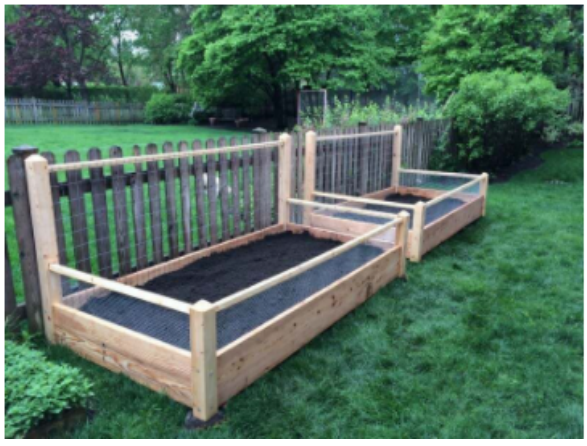
For all forms of demolition, the Town and Country Planning (General Permitted Development) Order 1995 Part 31[3] provides permitted development rights[4] for demolition under certain conditions. Seek advice on these conditions. In this event a Prior Notification Application needs to be submitted to the local planning authority before demolition begins – a 28-day period is provided for determination of the application.

If you are proposing to demolish a structure as part of a project for development, you should include the demolition in the description of development in your planning application. In this instance, a prior notification application would not be necessary.

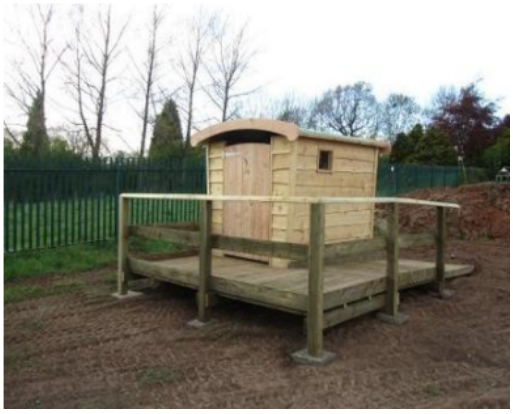
Structures

To reiterate, ultimately, it is your local planning authority who decides whether your project works amount to development. The tests local planning authorities use to decide if a building operation amounts to development depend on the size, permanence, and physical attachment of the structure to the ground. The degree of size, weight and bulk are important factors, as well as the ability of the structure/s to be dismantled and moved around or off site.

There has been a fair amount of case law over the years relating to what may or may or may not amount to development. Examples of structures that have been proven not to have reached the threshold of development (and therefore, not required the submission of a planning application) are raised beds, chicken sheds and small areas for shelter. Crucially, assessing if a structure meets the 'development' threshold is a matter of fact and degree. Here are a couple of scenarios for you to consider.



Installation of 2 raised beds may not be deemed large or bulky enough to amount to development



A compost toilet or shipping container that is fixed to the ground, bulky and permanent in nature, is likely to amount to development.

However, it is not for us to accurately define what structures might amount to development in this factsheet. That is always a matter of fact and degree in individual cases. You should always speak to or write to your local planning authority before you start works. Not doing so may mean you are ineligible for any (less onerous) prior notification procedures and a full planning application would need to be submitted at greater cost.

Permission of the landowner

A planning applicant does not need to own land to submit a planning application. Conversely, community growers and allotment holders may be told by their landowner or other authorities that they are allowed to erect certain structures. Please be careful when you hear this advice. Sometimes this advice comes from community or town council or the estates/ countryside department of the local authority acting as the landowner. It relates to the stipulations in your tenancy, licence or lease. The permission of the landowner is entirely separate to whether you need planning permission. The local planning authority is the determining authority for whether you need planning permission.

Engineering operations

Engineering operations, such as the excavation of land for a car parking area, creation of ponds for irrigation or flood prevention or the creation of an access road or pathway to provide a means of access can all amount to development. Again, it is a matter of fact and degree as to whether you reach the threshold of development and for the relevant local planning authority to decide.

Permitted Development

Permitted development rights are automatic rights of planning permission granted to various classes of development. Many of the rights relevant to growers, are provided in part 2 and 6 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 1995 (the Order). Part 6a of the General Permitted Development Order was added by Welsh Government in December 2020. See text below. It is very important to consult with your Local Planning Authority to ask if planning permission is required for any works you wish to carry out prior to starting works. Please note, the permitted development rights that householders are provided are not applicable to growing projects which are located beyond the limits of a house garden (Part 1 of Schedule 2 of the Order). Permitted development rights in Wales are different to those in England, Scotland and Northern Ireland.

Permitted development rights for structures on community growing spaces

On 21st December 2020, the Welsh Government created Part 6a of Schedule of 2 of the Town and Country Planning (General Permitted Development) (amendment) Order 2020. This amendment to the 1995 Order provides growers with some permitted development rights to build one or two small structures on community growing spaces without requiring a planning application to be submitted.

For the purposes of this part of the Order 'community growing spaces' are –

(a) an allotment including an allotment garden within the meaning of the Allotments Act 1922(1); or
(b) any other land used or intended for use—
(i) by one or more communities,
(ii) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
(iii) but not for the purposes of making a profit.

If a growing space meets the definition of a community growing space and the area of land is over 62 square metres, but less than 125 square metres, it is permitted to erect either a storage shed or a greenhouse.

If a growing space meets the definition of a community growing space and the area of land is over of 125 square metres or more it is permitted to erect both one storage shed and one green house.

The limit for the size of each structure is 6 square metres and 2.2 metres in height. Please see Appendix 1 for examples of a greenhouse and a shed less than 6 sq metres. Community Gardens sited on land in an Area of Outstanding Natural Beauty, a National Park, Conservation Area, a World Heritage Site and land within the curtilage of a listed building are excluded from the permitted development rights afforded to community growing spaces as per Part 6a of the 2020 Order.
Community growing space development is also not permitted within –

- 8 metres of a non-tidal main river (or within 8 metres of any flood defence structure or culvert on that river); or
- 16 metres of a tidal main river (or within 16 metres of any flood defence structure or culvert on that river).

You should consult with your local planning authority to check if your development is permitted development.

Agricultural use of land

Part 6a of the Order provides for consistency by all local planning authorities on whether planning permission is required for incidental structures on community growing spaces. Furthermore, this addition to Part 6 of the Order, confirms the understanding amongst many local planning authorities, that community growing spaces are an agricultural use of land. Agriculture is not included in the meaning of development and a change of use application is not required where there are proposals for community growing spaces or indeed, for any form of horticulture, from other uses of land.

Minor Operations (forms of enclosure)

The text contained in Part 2 Class A of Schedule 2 of the 1995 Order[5] explains that generally, if not within the grounds of a listed building, it is permitted to erect, construct, maintain, improve or alter a gate, wall, fence or other means of enclosure where;

1. Adjacent to a highway used by vehicular traffic, up to a height of 1 metre above ground level;
2. Not adjacent to a highway used by vehicular traffic, up to a height of 2 metres above ground level.

Minor Operations (means of access)

By virtue of Part 2, Class B of Schedule 2 of the 1995 Order, it is permitted to form, lay out or construct a means of access to a highway which is not a trunk road or a classified road, [motorway a or b road) where that access is required in connection with development permitted by other classes or the Order (but not means of enclosure). However, it would be dangerous to try to define this part of the Order in detail here. Please consult with your local planning authority.

Permitted Development – (temporary buildings)

Generally, it is permitted to provide a temporary or moveable structure where it is required, during construction of development and operations which have gained full planning permission.

It is also possible to gain permitted development rights for temporary uses of land for a period of 28 days in any calendar year but there are conditions and specific exclusions, and you should speak to your local planning authority if you wish to carry out a temporary use of land.

There are many misconceptions about 'temporary structures' and whether growers can construct them, for example, in relation to sheds or structures that are not physically attached to the ground. This is not the case. In reality, there are no 'temporary building' permitted development rights to erect such structures and the relevant test is around whether the building amounts to 'development' or not – please refer to the paragraphs above.

Permitted Development - Development in association with agricultural units (farms) [6]

Part 6 of Schedule 2 of the General Permitted Development Order 1995 (the Order) [7] provides permitted development rights for farming operations.

This part of the Order can be split into 2 classes -

1. Development on Farming units (farms) over 5 hectares.
2. Development on Farming units (farms) under 5 hectares.

Farmers operating on farming units over 5 hectares can erect new structures, (up to 465sq metres or 5005 sq ft) and alter and extend existing structures within certain criteria without the need to apply for planning permission. Again, within certain criteria, they can also carry out engineering operations (such as excavations, parking areas or terracing of a slope). All works need to be reasonably necessary for the purposes of agriculture on that unit.

If all the criteria are likely to be met, a prior notification application should be submitted to the local planning authority prior to starting works. If you start works, a full planning application is required. The fee for a prior notification application is currently (Jan 2021) £100 as opposed to the cost of a full planning application which can be much more costly depending on the size of the development.

In Wales, the local planning authority have 28 days to consider whether prior approval (full planning permission) would be required for the development.

A prior notification application is only required to the local planning authority for the erection of new structures on land (unless a proposed extension is regarded significant) unless the land is within a national park, where alteration and extension also require a prior notification application. Please consult with your national park authority who are the local authority on planning matters in national park areas in Wales.

Where the proposed development is within 400 metres of the curtilage of a listed building, additional restriction apply and you should consult with the local planning authority on these restrictions. For example, the building cannot be used for the storage of slurry or for the accommodation of livestock.

Farmers operating on farms under 5 hectares can only alter or extend existing agricultural buildings.

They can also potentially;

- install or replace plant or machinery;
- rearrange or replace a sewer, main, pipe, cable or other apparatus;
- provide, rearrange or replace a private right of way;
- provide a hard surface;
- deposit waste;
- carry out certain operations in connection with fish farming.

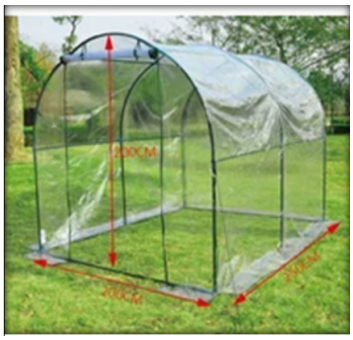
Within certain criteria and conditions. If operating on a farm under 5 hectares and within a national park area, a prior notification application is required to be submitted to the local planning authority. Again, all development must be reasonably necessary for the purposes of agriculture on the farm.

APPENDIX

1. You can find details of your local planning authority in Wales here - https://gov.wales/find-your-local-planning-authority
2. Saving Britain's Heritage v Secretary of State for Communities and Local Government 2011
3. https://www.legislation.gov.uk/uksi/1995/418/schedule/2/part/31/made
4. Permitted development rights provide classes of development for which a grant of planning permission is automatically given and a formal planning application is not required
5. https://www.legislation.gov.uk/uksi/1995/418/schedule/2/made
6. Paragraph x of part 3, Schedule 2 of the GDPO 1995 states "agricultural building" means a building (excluding a dwelling house) used for agriculture and which is so used for the purposes of a trade or business; and "agricultural use" refers to such uses; "agricultural tenancy" means a tenancy under—(a) the Agricultural Holdings Act 1986(12); or(b) the Agricultural Tenancies Act 1995(13)
7. https://www.legislation.gov.uk/uksi/1995/418/schedule/2/part/6/made

Examples of a greenhouse and shed less than 6 square metres

Example Shed – 5.6 sq m



Example greenhouse - 2m width x 2.5m length (x 2m in height) = 5 sq m