



PLANNING
MATTERS



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Planning permission is needed for all development, the definition of which covers both:

- i. physical development (e.g. erecting sheds, polytunnels, etc); and
- ii. any material changes in the use of any buildings or land (e.g. using an agricultural field for anything other than purely agricultural purposes).

However, if land is used purely for agricultural purposes, then planning permission is not needed, with the definition of agriculture 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...”

So, if a site is to be used purely for food growing, then planning permission should not be needed. But, where a site is to be used for more than just food growing (for example, for educational or social purposes), or where it is proposed to erect any structures, then planning permission is likely to be required. There is though one caveat to this, as some small-scale works such as the erection of fencing or some agricultural buildings may be carried out without having to apply for planning permission, if the works fall within the definition of 'permitted development' (for full details on which, see 'permitted development' below).

For definitive advice as to whether planning permission is required for any given project, as well as key issues that any planning application might need to address, contact your local authority's planning department as early as possible in the process, as different local authorities have been known to have different views on when planning

permission is and isn't needed. A lot will also depend on the scale and scope of the activities to be carried out, and any physical infrastructure that might be needed. In addition, advice on individual cases is available from the Community Land Advisory Service on request.

In parallel with seeking planning permission, check any physical works comply with building regulations and whether a building warrant is required.

Permitted Development (the Town and Country Planning (General Permitted Development) (Scotland) Order 1992).

As highlighted above, it is not necessary to apply for planning permission for some small-scale works if these fall within the definition of 'permitted development', with the classes of 'permitted development' that are most likely to be of interest to community growing projects being:



- The erection, construction, maintenance, improvement or alteration or a gate, fence, wall or other means of enclosure (subject to a maximum height of 2m, or 1m if within 20m of a road, and not as a means of enclosing a listed building);
- The formation, laying out and construction of a means of access to a road which is not a trunk road or a classified road, where that access is required in connection with any other permitted development (other than certain domestic developments, and gates, fences, walls or other means of enclosure allowed under the first bullet point above);
- The erection, construction or alteration of any access ramp outside an external door of a non-domestic building (subject to various conditions about the length and height of any such ramp);
- The use of land (other than a building or land within the curtilage of a building) for any purpose, except as a caravan site, on not more than 28 days in total in any calendar year, and the erection or placing of moveable structures on the land for the purposes of that use (for example, this would allow land to be used for occasional events etc);
- Works for the erection, extension or alteration of a building on agricultural land (subject to certain conditions about what the land on which this would be erected is used for (for details on which, see below), the building's size/use/proximity to neighbouring uses, etc., and to submission of 'prior notification' to the Council before the building is erected;
- The carrying out of any works required in connection with the improvement or maintenance of watercourses or land drainage works;
- Works for the erection, extension or alteration of a building, plus certain other operations, on forestry land (subject to conditions about the building's size/use/proximity to neighbouring uses, etc, and to submission of 'prior notification' to the Council before the building is erected;
- The installation, alteration or replacement of solar PV or solar thermal equipment on a nondomestic building;
- Works on agricultural or forestry land for the erection, extension or alteration of a nondomestic building for the generation of energy from, or storage of, biomass; and
- certain works carried out by local authorities, provided that: the cost of this does not exceed £100,000; it does not constitute bad neighbour development; and the development would not constitute a material change of use of any buildings or other land.

It should though be noted that, whereas many community growing groups may be interested in erecting an agricultural building as permitted development, this is only allowed if:

- this would be erected on agricultural land, which is defined as "*land in use for agriculture and which is so used for the*

purposes of a trade or business... ”, with many community growing sites not falling within this definition even if they are otherwise used for agriculture, although different local authorities seem to take different approaches to this; and

- the land also needs to be part of an agricultural landholding of at least 0.4 ha to qualify for agricultural permitted development rights, with many community growing sites being smaller than this.

It is also important to note that permitted development rights may be restricted in certain areas, for example in sensitive locations such as within the grounds of a listed building and/or within a conservation area, in which case an application for planning permission will be needed even if works would fall into one of the categories listed above otherwise.

It should be noted that the Scottish Government is considering a number of changes to permitted development rights in Scotland, which could remove the need to apply for planning permission for a number of works commonly carried out on community growing sites, for example the erection of sheds, greenhouses, portable buildings, containers, and communal huts on these, as well as the creation of car parking, and/or accesses. At the time of writing, it is not known when any such changes might be made.



Applying for and obtaining planning permission

Where an application for planning permission is required, this will be assessed against the Council's Development Plan and other material planning considerations (for the definition of which, see below), with specific local policies likely to vary across the country. In all cases though, it will be necessary to ensure that the natural and built environment is protected, any proposed development is suitably serviced, and there is no negative impact on neighbouring amenity. And, in this respect, the key considerations are the same as those which should be taken into account when identifying a suitable site. Some matters that local authorities might be specifically interested in when assessing a planning application are however set out below.

Impact on nearby residents' amenity

It is important that the proposed development does not adversely affect the amenity of nearby residents (for example, as a result of noise, fumes, dust, over-looking, increased numbers of vehicles using or parking on nearby streets, or loss of existing open space), and these issues should be borne in mind when preparing the layout and design of any given site, with steps taken to preserve the amenity of nearby residents as much as possible (for example, by providing landscaping by way of screening between the site and neighbours where appropriate). Early discussion with local residents can allay any fears they may have, and garner their support for the proposal.

Car parking and access

The number of car parking spaces to be provided, the location of those spaces, and the means of access to the site all need to be carefully assessed in order to ensure all such arrangements are safe and appropriate to the site context. The local authority may have car parking standards that need to be adhered to and, if fewer spaces are to be provided than relevant standards require, then good reasons for this should be given – for example, a lower number of spaces may be justified where a site is readily accessible on foot, by bike and by public transport. In all cases, the local authority may ask for details of the anticipated number of users and how they are expected to access a site to be submitted with an application to ensure no access related issues arise.

Protection of species

Certain species of flora and fauna are protected by legislation, and works that potentially harm these species or their nesting or hunting areas are unlikely to be acceptable, as are any works that might damage any existing trees. Consideration should be given to the presence of any protected species or trees on a site at an early stage, and the planning authority may ask for formal surveys to be submitted in some cases to demonstrate that no negative impacts in these respects might arise.

Flooding

Certain areas of land are more susceptible to flooding than others, and certain uses of land are more appropriate within such areas than

others. Open space, including community growing projects, may be acceptable in areas prone to flooding, although this is by no means definitive. And, where there is any potential flood risk, a flood risk assessment may be needed to demonstrate that any proposed development is appropriate in the context of this.

Drainage

Related to the need to ensure development would not be at risk of flooding, it is necessary to ensure that it is appropriately drained, with this being particularly relevant where new built structures such as sheds or polytunnels are proposed. Drainage impact assessment may be requested in connection with larger scale developments, but should not be needed for smaller scale structures such as those typically found on a community growing site, for which it should be sufficient to show that water run-off would be collected in water butts or similar for re-use.

Hand washing

If a compost toilet is proposed, then hand washing facilities are likely to be required, with the most appropriate way of providing these being something to discuss with the Council's Environmental Health officers. There are though a number of systems available which can be filled with hot water as and when required, so a connection to the mains should not necessarily be required, and examples of such systems having been accepted by Council Environmental Health officers are available.



Other material planning considerations

There is no set definition of other material planning considerations that should be taken into account when assessing a planning application, but some good starting points for any proposed community growing use may be to look for the following:

- **Scottish Government Policy** – in terms of which the Scottish Government has consistently expressed support for land being dedicated to food growing through **Scottish Planning Policy**, the preparation of **National Planning Framework 4**, and **National Food and Drink Policy – Becoming a Good Food Nation**, and these are worth referring to high level support for community growing projects in principle;
- Local authority's **food growing strategy** – what does this say about the availability of space for community growing projects, and what spaces are identified as suitable for this use?

- Any **Local Place Plans** for the area (if any exist) – are any spaces for community growing use identified here?

- **Local Outcome Improvement Plan** – Is there any reference to increasing provision of growing spaces in this? Or are there any outcomes that a community growing project will help achieve?

In all cases, it is advisable to provide the local planning authority with as much information on the proposed community project as possible, as early as possible, as this can help keep the time (and cost) associated with making an application for planning permission down.

Further Resources

- Community Ownership Support Service guide to engaging with the planning system.
- Woodland Trust note on planning system (with focus on protections for trees and woodlands within this).
- [Planning Circular 2/2022: Development Management Procedures](#), which provides detailed guidance on the procedures to be followed when a planning application is made, and how planning applications are determined.



Illustrative Examples

Below are several examples to illustrate when planning permission is likely to be needed, and when it isn't. These are though intended to be illustrative only, and the local planning authority should always be consulted about any specific proposals before proceeding to ensure all relevant planning requirements are satisfied.

Table of planning scenarios

Land use scenarios	Planning requirements
Use of field as allotments.	Not development. Planning permission not required.
Use of field as allotments, with boundary fence.	Only the fence falls within the definition of development but, provided this meets the requirements with regards to height etc set out above, this can be erected under permitted development rights without needing to apply for planning permission for any element of the proposed use/works.
Use of field as allotments, with sheds erected on this for use by plot holders.	Although the use of the land is agricultural in nature, this is not being carried out in the course of a trade or a business, so it is likely to be necessary to apply for planning permission for the sheds.
Use of field as market garden, with a polytunnel erected on this for growing produce.	The use of the field as a market garden is not development, so no planning permission is required. And, if the site exceeds 0.4 ha in size, then it may be possible for the polytunnel to be erected under agricultural permitted development rights, subject to first submitting prior notification of this to the Council. However, it would be advisable to check that the Council agree that this can be done under permitted development rights in the first instance.
Use of field as market garden, with compost toilet and shed for tea breaks.	As the structures being erected are not directly required for the purposes of agriculture themselves, it is likely to be necessary to apply for planning permission for these.
Use of field for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Likely to be considered a material change of use of the land for which planning permission is required. Likewise, it is likely to also be necessary to apply for planning permission for any sheds/polytunnels/compost toilets etc associated with this (but not for any fencing, provided this meets the requirements with regards to height etc set out above, to be erected under permitted development rights).
Use of part of a public park for allotments.	Not development. Planning permission not required
Use of part of a public park for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Could be argued that this is a continuation of the park's existing use and so planning permission should not be needed, other than for any built structures that might be needed (other than any fences that could be erected under permitted development rights), but would be advisable to consult the planning authority in the first instance.
Use of vacant site in city for mixture of community growing spaces, teaching areas, wildlife areas, etc.	Likely to be considered a material change of use of the land for which planning permission is required. Likewise, it is likely to also be necessary to apply for planning permission for any sheds/polytunnels/compost toilets etc associated with this (but not for any fencing, provided this meets the requirements with regards to height etc set out above to be erected under permitted development rights).