Council for Voluntary Service
West Lancashire

A Guide for Allotments and Planning Law

Digging below the surface

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Prepared for the **Central Lancashire Community Food Growing Leads Group** by:

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Introduction

I have been commissioned by West Lancashire CVS on behalf of the Central Lancashire Community Food Growing Leads Group to prepare a report, in an easily understandable format, covering all the planning issues that an allotment society might face when creating new or improving existing allotments. This is no easy task as planning law, like any other law, is complex and is open to interpretation in different ways by different people. Therefore I have prepared a full report setting out the legal side with as little jargon as possible and also a separate summary that can be used as a guide for allotment societies and local authorities.

How the planning system works

Before considering allotments it is necessary to understand how the planning system works. The system was set up to control development and the use of land and buildings but there are various pieces of legislation that remove the need to obtain permission. For example the General Permitted Development Orders set out certain types of development that can be carried out without the need to apply for planning permission. These are called permitted development rights and they vary according to the type of development proposed. Also The Use Classes Order defines groups of uses of land or buildings and you don't need permission to change within the group or from certain groups to other groups. Finally there are the Advertisement Regulations that govern which types of advertisements and notices need permission. If planning permission is required you must apply to the local planning authority and they will determine if planning permission can be granted.

The Planning Act states that planning applications must be determined in accordance with the development plan unless other material considerations indicate otherwise.

The development plan consists of any adopted local plans or local development documents. These should conform to government guidance and policy such as Circulars, Planning Policy Statements and other guidance published by the Department for Communities and Local Government.

Do I need planning permission to use land as allotments?

The answer is not as simple as you may think. There is a High Court decision (Crowborough Parish Council v. Secretary of State for the Environment November 1980) where it was held that allotments fell within the definition of "agriculture" in the relevant planning act and therefore planning permission was not required to use agricultural land as allotments. Although this decision was made many years ago I feel that it still holds as the definition of agriculture in the current planning act

(Section 336 of the 1990 Act) is exactly the same as the definition in the 1971 Act which was in force when the decision was made in 1980. This ruling has been supported in several appeal cases such as (Newark B.C. 8/12/83) and (City of Leeds 30/5/84) where alleged changes of use from allotments to piggeries were held not to be development. Another case is (Doncaster B.C. 14/1/94) where use of agricultural land as allotments was considered not to require planning permission. I have written to the Royal Town Planning Institute's (RTPI) magazine for advice and they have confirmed that there is no need to apply for permission if the allotments are to be used for growing vegetables and fruit. The magazine's legal expert does point out that this may not be the case if the allotments are used for leisure purposes or have a significant area of ornamental garden. They also confirmed that there have been no developments in law since the Crowborough judgement.

As agriculture is not included within the meaning of development in the 1990 Act (Section 55) it could be argued that you should be able to use any piece of land as an allotment without the need to apply for planning permission. I have followed this up with the RTPI magazine and they have confirmed that planning permission would not be required to use any land for allotments of an agricultural nature. They go on to point out that if an allotment's use is non-agricultural, for example as a leisure plot, then permission would normally be required. In the Crowborough case referred to above it is clear that the use of any land for allotments does not require planning permission provided that they are used for horticulture (which would include growing food and flowers); fruit growing, seed growing and for the breeding and keeping of livestock.

Therefore it is possible to create allotments for growing food within school grounds without the need to apply for planning permission. This applies to both state schools and private independent schools.

It must be stressed that, whilst permission is not required for creating allotments for food growing it is required if an allotment is used for a leisure use such as the laying or keeping of a lawn. To avoid the need to apply for permission the allotment must be of an agricultural nature such as the growing of vegetables.

The above only covers the use of the land. If you want to build storage huts, polytunnels or greenhouses, install fencing above a certain height, provide lighting or create a car park, access road and paths then, in most cases, you will need to apply for permission. The next sections of my report cover these types of development.

Plot holder's sheds and greenhouses

The National Society of Allotment and Leisure Gardens (NSALG) state on their web site that they believe that sheds below 12 sq metres and greenhouses below 15 sq metres that do not need foundations or service connections should be permitted without local authority approval. However I have looked through all the relevant legislation and cannot find any justification for this statement. I have asked NSLG for more information and they have simply replied, "The agreement for the allotment must be checked, as this could explicitly prevent the building of a

shed/greenhouse". This leads me to believe that they are talking about the permission of the local authority as landlord rather than the local planning authority which is an entirely separate matter. In terms of planning law the only exception to the need to apply for planning permission for a shed or greenhouse, other than within a residential garden, is contained within Section 12 of the General Development Order (GDPO) 1995. This permits a local authority to erect small ancillary buildings of less than 200 cubic metres and less than 4 metres high on land belonging to or maintained by them. This exception only applies to local authorities, which, in the case of allotments would include Parish Councils as well District and County Councils. A strict interpretation of this means that the local authority itself should construct the building. In practice I suspect that local authorities permit such buildings to be erected on by the plot holder. The important point is that on sites that are privately owned and are run by the voluntary sector planning permission will always be required for sheds and greenhouses no matter how small they are. I have confirmed this with the Planning Institute's legal expert. Their response states that: "I agree that allotments would not enjoy agricultural permitted development rights. A Parish Council could erect sheds or other structures on allotments under class 12 rights, but these would not extend to allotment holders. No other provision in the GPDO gives permitted development rights for allotments, though planning authorities often turn a blind eye to small structures built on such sites".

It has been suggested that small sheds that do not have foundations and are not connected to services are not classed as development and therefore do not require planning permission as they are only temporary structures. I have written to the RTPI about this and their response shows this to be a very 'grey' area. I have set out the response in full below:

"On your second query, deciding whether structures that are movable or not attached to the ground require planning permission is quite difficult. The lead case in the matter is Cardiff Rating Authority v Guest Keen Baldwins Iron and Steel Co (1949). The three main issues to be considered are whether the structure's size is such that it would normally have to be built on site rather than be brought in ready made; whether the construction suggests some degree of permanence, meaning that it could only be removed by pulling it down or taking it to pieces; and whether it is physically attached to the ground. Just because a structure is not attached to the ground does not necessarily take it outside planning control. For example it has been held that placing a shipping container on land requires planning permission if the intention is to keep it there permanently. Someone who puts up a shed or greenhouse on an allotment would normally expect it to remain there for many years, so building it would require permission even if it is not attached to the ground. On the other hand, a structure intended to be temporary, such as a small polytunnel that would remain in place for just one growing season, would probably not require permission even if it were fixed to the ground".

It would appear from the above that most buildings, no matter how small or how they are constructed, will require planning permission if they are on privately owned (ie non-local authority owned) land. However local authorities such as Borough, District, County and Parish Councils do have rights to erect buildings up to 200 cubic metres in size and below 4 metres in height.

Small buildings within school grounds
Land owned by the County Council also benefits from the above permitted development rights so it would be possible to erect small buildings within state school grounds provided that they were below the thresholds set out above. Permission will, however, be required if the school is privately owned and maintained.

Small buildings on Housing Association land
The above permitted development rights for small ancillary buildings only apply when land is owned or maintained by a local authority ie a County, District or Parish/Town Council. These rights do not apply to Housing Associations even if the land was formerly owned by the local authority. They may apply if the local authority maintains the land. Permitted development rights may apply to Arms Length Management Organisations (ALMOs are companies set up to manage a local authority's housing stock) if the land is still owned by the local authority, is maintained by the local authority or is maintained on the local authority's behalf by the ALMO. It would be necessary to clarify this with ALMO.

Polytunnels

The National Society of Allotment and Leisure Gardens (NSALG) state on their web-site that local authority approval is not required for polytunnels if they are below 30 sq metres and do not need foundations or service connections. I have written to NSALG and they have replied that, due to a recent case, polytunnels are now considered on a case-by-case basis by local planning authorities. A polytunnel that was only intended to be used during the growing season and would be removed over the winter would not require permission but I cannot find any legislation that would remove the need to apply for planning permission for a permanent polytunnel other than within Section 12 of the General Development Order 1995. As already mentioned this permits a local authority, including a Parish Council, to erect small ancillary buildings of less than 200 cubic metres and less than 4 metres high on land belonging to or maintained by them. It does not apply in other situations.

Portable buildings and containers

A portable building requires planning permission if it is to be in place for more than 28 days and the same applies to containers. Local Authorities are unlikely to favour the use of containers where they are visible from outside of the allotments as they are extremely unsightly. Also a portable building can be unsightly. If they are to be used on a permanent basis then planning permission will be required. To increase the chances of gaining permission they should be screened from public view by attractive fencing and/or landscaping.

Communal huts or clubhouses

A communal hut for the storage of tools is likely to be larger and more permanent than a plot holder's shed and, in my view will always be regarded as development requiring planning permission. If it includes a small area for making drinks then it becomes more like a clubhouse and would definitely require permission. It is also

likely that the local planning authority would require the provision of car parking to serve such a facility.

Fencing

The General Permitted Development Order 1995 states that planning permission is not required for any means of enclosure including a fence, wall or gate provided that (a) it is below 1 metre high where it is adjacent to a road; or (b) it is below 2 metres anywhere else except within the curtilage of a Listed Building.

Access and car parking

The formation of a vehicular or pedestrian access to an allotment would definitely require planning permission. The creation of a car park to serve allotments would also definitely require planning permission.

Water supply

Statutory Undertakers such as United Utilities can lay pipes underground without the need for planning permission. It could be argued that the creation of standpipes within allotments is an engineering operation but in my view the impact is so small that I do not think a local authority would ask for a planning application.

Water butts

The placing of a water butt on an allotment would not, in my opinion be classed as development and would not therefore require planning permission provided that it was not fixed to the ground.

Water storage tank or pond/reservoir

A permanent water storage tank, reservoir or pond would be an engineering operation requiring planning permission.

Toilet facilities

A permanent building connected to a sewer or septic tank would require planning permission. A temporary portable toilet or a composting toilet that is not fixed to the ground may not require planning permission. As explained in the section on sheds it really boils down to the interpretation of what constitutes a moveable structure. If it is not removed from time to time it is permanent and, in my view, would require permission.

Compost bins

The placing of a compost bin on an allotment would not, in my opinion be classed as development and would not therefore require planning permission provided that it was not fixed to the ground.

Raised beds

Creating a raised bed could, strictly speaking, be classed as an engineering operation that falls within the definition of development requiring planning permission. However it may be deemed to be "de minimis" which means that it is so small that it does not warrant intervention by the local planning authority. The scale of the raised bed, in terms of its height and the area covered, will be an important consideration. Obviously the larger it is the more likely that the local planning authority will require a planning application. If the beds are required to permit use by the elderly and people with disabilities then they are likely to be less than a metre high and therefore, in my view in it is extremely unlikely that a planning authority would require a planning application.

Planning fees

Fees for dealing with planning applications are set nationally and can change from time to time. If they are raised it tends to be in early April. It is always advisable to check with the local planning authority before submitting an application as payment of an incorrect fee can delay the validation of your application.

Currently the fees are as follows:

If planning permission is required for a change of use then the local authority fee for determining the application is £335.

The fee for an application for the construction of a car park and means of access is £170.

The fee for an application for the erection of a building or buildings is based upon the gross floor area covered by the building using the external footprint of the building which includes the thickness of external and internal walls. The fees are as follows:

Size of Building	**Fee**
Up to 40 sq m gross floor space	£170
Over 40 sq m up to 75 sq m	£335
Over 75 sq m up to 150 sq m	£670
Over 150 sq m up to 225 sq m	£1005
Over 225 sq m up to 300 sq m	£1340
Over 300 sq m up to 375 sq m	£1675
Over 375 sq m up to 450 sq m	£2010

It can be seen that there is a sliding scale above 75 sq m of £335 per 75 sq m or part thereof. This goes up to 3750 sq m (which attracts a fee of £16,565). Above 3750 sq m the fee increases by £100 per additional 75 sq m). Most allotment buildings requiring planning permission should however be covered by the table above.

The fee for erecting a fence, if it requires permission, is not covered specifically by the fee regulations. Therefore it comes under class 9b attracting a fee of £170 per 0.1hectare, or part thereof, of the site area, up to a maximum of £1,690. My advice would be to keep all fences below 1 metre high adjacent to a highway and below 2 metres high elsewhere so that you avoid the need for planning permission.

West Lancashire offers a 50% discount for Parish Councils.

Planning policies

As previously mentioned, planning applications are determined in accordance with the local development plan unless there are other material considerations that indicate otherwise. Therefore it will be important to check the planning policies for your site if you need to apply for planning permission. Planning policies will vary slightly between local authorities. The first thing that you need to check is the adopted proposals map in the Local Plan or Local Development Framework for your area. This will show if your site is earmarked for development or is protected in some way such as being in the green belt, a conservation area or an area of ecological or landscape value. The plan will show which policies apply to your site and from this you should be able to determine if planning permission is likely to be granted.

Whilst allotments would be an appropriate use in the green belt it is possible that the buildings requiring permission may conflict with the main purpose of the green belt which is to keep land open. Most green belt policies do however permit buildings which are for agriculture or are essential facilities for outdoor recreation.

I would always advise you to speak to the planning department for advice on their policies as they can vary from one authority to another and they are reviewed and replaced from time to time.

Submitting a Planning Application

If you need to apply for planning permission you will need to submit a planning application to your local authority. The application will need to contain sufficient information to allow the local authority to determine it's impact on the local area and any neighbours.

You will need to send them:

- A completed planning application form
- The relevant fee
- A certificate stating that the applicant owns the land or has notified the owner of their intention to submit an application.
- A location plan showing the area of the application outlined in red and any other land owned by the applicant edged in blue. This should be on an Ordnance Survey base at a scale of 1:1250 or 1:2500 showing enough of the surrounding area to allow the exact site of the site to be determined. It should also include a north point.
- Scaled plans and elevations showing the position of all buildings, access roads and paths, fencing, car parks and landscaping details. These should

be at a scale that allows the case officer to accurately judge the development's impact on the surrounding area. I would recommend 1:200 for buildings and 1:500 for the overall site layout. All plans and elevations should include a title, the relevant scale, a reference number and a north point.

- Details of building materials, fencing types and the surface materials of paths, roads and car parks.
- You can submit supporting information with your application in the form of a letter or report. This could set out why the development is required eg how many people want an allotment or why it should be granted permission eg how it conforms with planning policies.

You can submit applications on line using the following link:
http://www.planningportal.gov.uk/planning/applications/planningapplications

Certificate of Lawful Development

It is possible to apply for a certificate of lawful development for the allotments or for a building. There are two reasons why you may wish to do this. Firstly you can apply if you are not sure if planning permission is required for a *proposed* building or a change of use of land or building. The local planning authority will let you know if your proposal would be lawful if you carried it out without planning permission. It gives you the reassurance to go ahead without the fear of enforcement action being taken against you. Secondly you can apply after development has taken place. This provides the possibility for you to obtain a statutory document confirming that the use, operation or activity named in it is lawful for planning purposes. Whilst it can be a useful way of progressing it does involve submitting plans and information as well as the payment of a fee. I would only advise using it in cases where it is unclear if permission is required. You should not need to do this if you follow the guidance in this report, as it should be clear when permission is required and when it is not. If permission is required you should always apply. If you are confident that permission is not required then you can go ahead. In the past you could simply write to the local authority asking if permission is required and get an informal opinion from the local authority. However this can result in misunderstandings and so many authorities, including West Lancashire will now only respond to a formal application.

If you do carry out some works and the local authority threatens to take enforcement action then there are a number of ways in which you can proceed. You can apply for a certificate of lawful development, you can appeal against the enforcement notice or you can apply for planning permission to retain the development. I would advise you to take some independent advice if you find yourself in this situation as each course of action carries certain risks.

Good Practice

It is recommended that, before any works are carried out that you discuss your proposals with the local planning authority.

Summary Table

Allotments: When to apply for planning permission	
Planning Permission is required:	**Planning Permission not required:**
To use land for leisure allotments or ornamental gardens where the use cannot be regarded as falling within the definition of agriculture. For example if it contains lawns that are used for sunbathing or playing games.	To use any land for allotments for agricultural purposes which includes growing flowers, food and fruit provided that there are no buildings, car park or means of access.
For any building on a site that is not owned or maintained by the Parish, District or County Council. This includes all: • Sheds • Greenhouses • Polytunnels • Communal buildings for storage or as a clubhouse • Toilets NB a Housing Association that has acquired land formerly owned by the local authority still needs to apply for planning permission unless the local authority has retained ownership or is responsible for maintaining the land.	For buildings with a volume below 200 cubic metres and a height below 4 metres on land that is owned or maintained by the Parish, District or County Council.
For fences above 1 metre high adjacent to a highway or above 2 metres high elsewhere.	For fences that are 1 metre high or less adjacent to a highway or 2 metres or less elsewhere.
For water storage tanks, reservoirs and ponds.	For underground pipes and standpipes.
For car parks, access roads and footpaths.	For water butts used for collecting water if they are not fixed to the ground.
For any portable buildings that remain on site for more than 28 days.	For compost bins.
	For raised beds below 1 metre in height.

Glossary

Acronyms

ALMO – Arms Length Management Organisation – this is an organisation that has been set up to manage a local authorities housing stock.

GPDO – General Permitted Development Order – this is a piece of legislation setting out the types of development that do not require planning permission.

NSLAG – The National Society of Allotment and Leisure Gardens

RTPI – Royal Town Planning Institute

Definitions

Agriculture is defined in 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."