

Appendix 1

Planning Guidance Note

**Class Q Prior Approvals - Change of use of Agricultural buildings
to dwellings**

Contents

Introduction	2
Existing building use	2
Thresholds	3
Restrictions	3
Building operations and structural stability	4
Conditions	6
Other matters	8
Subsequent planning applications	9
Further advice	9
Conclusion	9

Introduction

The change of use of a building is development that requires planning permission. The Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO) automatically grants planning permission for some changes of use. The GPDO permits; the change of use of an agricultural building to a dwelling house; and building operations reasonably necessary to convert the building, without requiring the express permission of the local planning authority. This provision is set out in Class Q, Part 3 of the GPDO subject to a number of criteria being met and certain conditions being satisfied.

Whilst the GPDO is a prescriptive document and the local planning authority does not have the ability to exercise discretion over its statutory provisions, since this type of permitted development was introduced there have been 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 publication of guidance within the National Planning Practice Guidance (NPPG) (paragraphs 101-109) available using the following link:

<https://www.gov.uk/guidance/when-is-permission-required#agricultural-building-change>

This guidance note sets out the guiding principles for how decisions will be made by the Council for applications submitted under Class Q of the GPDO within the Chichester District Local Plan area. It explains what information will be required to demonstrate that a building is structurally capable of conversion and outlines how the fall-back of a prior approval scheme will be taken into account should be a subsequent planning application be submitted for a new dwelling.

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.

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 20 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. The Council, where necessary, will seek evidence as to compliance with this requirement and where there is continuing doubt will refuse prior approval.

Thresholds

The cumulative floorspace of the existing building(s) changing use to residential shall not exceed 465 square meters on an established agricultural unit. Following amendments to the GPDO in 2018 Class Q now makes a distinction between larger dwellinghouse (over 100 sq. m.) and smaller dwellinghouses (below 100 sq. m). The regulations state that no more than 3 larger dwellinghouses are permitted, and that in a combination of larger and smaller dwellinghouses no more than 5 units of accommodation are permitted.

Restrictions

The permitted development rights are subject to a number of restrictions and limitations, including the following;

- The GPDO safeguards agricultural tenancies⁴ which could be affected where Landlords wish to carryout development under the provisions of Class Q.
- Development is not permitted where other development approved under Part 6 (Agricultural Development) of the GPDO has taken place on the agricultural unit since 20 March 2013; or where development under Class Q would begin after 20 March 2023 where other development has taken place under Part 6 of the GPDO in the preceding 10 years.
- The extent of the works permitted 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.
- Development within a range of designated areas/types of building is not permitted. This includes conservation areas, a listed building⁵, an Area of Outstanding Natural Beauty and Sites of Special Scientific Interest (SSSI) among others.

Building operations

Firstly, it is important to establish that the procedure relates to the “conversion” of agricultural buildings. The leading high court case of [Hibbitt and another v Secretary of State for Communities and Local Government \(1\) and Rushcliffe Borough Council \(2\) \[2016\] EWHC 2853 \(Admin\)](#) has established that there is a clear distinction between conversion and rebuilding and in applying the principles of this judgment; the Council will assess proposals involving significant new building works to fall outside the scope of Class Q.

Partial demolition is permissible to the extent reasonably necessary to facilitate works. The extent of demolition permitted is not defined within the Order or the NPPG, and therefore this will be assessed on a case by case basis. However, demolition that would ultimately result in a building of a different size and form would exceed the works reasonably necessary to convert the building, and therefore would not meet the provisions of the GPDO and prior approval would not be permitted.

The term ‘reasonably necessary’ was previously open to a variety of interpretations and the government have sought to rationalise and clarify the matter by publishing advice in the NPPG at paragraph 105 which states:

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](#). 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 may include those which would affect the external appearance of the building and 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 go 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.

For a discussion of the difference between conversions and rebuilding, see for instance the case of [Hibbitt and another v Secretary of State for Communities and Local Government \(1\) and Rushcliffe Borough Council \(2\) \[2016\] EWHC 2853 \(Admin\)](#).

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, the 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 element(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)*
- *internal walls that provide lateral stability, strengthen the existing structure or take any load from the roof or other parts of the building*
- *provision of internal structures to support new window and door openings*

The 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 1 of policy 36 of the Chichester District Local Plan 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, any alterations to the building area limited 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 such as chimneys, flues, external cladding that extends beyond the existing envelope or steps. 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. If it is not possible to convert the building without the provision of these additional features then the proposal would not meet the requirements of the GPDO, and prior approval would be refused.

Conditions

Where the development proposed accords with the 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 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 habitable rooms to be provided within the building, should be provided. The Council will be directed by the West Sussex Parking Standards guidance, and any comments received from the Highways Authority at WSCC:

https://www.westsussex.gov.uk/media/1847/guidance_parking_res_dev.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.

c) Contamination risks on the site

Any submission needs to address contaminated land risks on the site. 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 this 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 either; safe refuge within the site would be available for the duration of a likely flood event; or 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.

The Council is required 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.

Other matters

Unlike a planning application, ecology and biodiversity considerations are not material to the Council's determination 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. In particular developments that would likely affect an internationally designated site (i.e. SSSI, Special Protection Area, and Special Area of Conservation) would not benefit from permitted development unless it has been demonstrated that there would be no significant effect. For such applications the Council will need to undertake a Habitat Regulations Assessment, and sufficient information will be required from the applicant for the LPA to complete the assessment.

Appropriate mitigation will be required alongside any application for prior approval within the zones of influence for Chichester and Langstone Harbours and Pagham Harbour. If the appropriate mitigation is not secured at the outset then a further prior approval would be required under the Habitat Regulations prior to the works commencing. If the mitigation is not provided via either of these routes the conversion of the building would not be permitted development and any development undertaken without the appropriate mitigation being provided would be at risk of enforcement action.

It is also important that works do not adversely affect wildlife, particularly protected species. Further advice on these matters can be found on Natural England's website:

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

Subsequent applications

Within the District it has become commonplace for land owners to seek planning permission for a new dwelling once prior approval has been granted for the conversion of an agricultural building to a dwelling. The Council recognises that there are benefits of doing this in respect of the eco-credentials of the resultant building, because a new build is likely to be more thermally efficient and designed to incorporate sustainable construction methods and technologies, thereby reducing the environmental impact of the dwelling. . However, the purpose of the prior approval process introduced by the government was to bring existing buildings back into use and to meet housing needs, and not to change the character of rural areas to being overly domestic or suburban in their appearance.

The planning permission granted by the GPDO for the residential use of an agricultural building is a fall-back position that carries significant weight. Therefore an appropriate replacement dwelling is likely to be acceptable in principle. However, any replacement dwelling should reflect the scale, design and proportions of the existing building. In exceptional circumstances there may be more flexibility, however generally attempts to increase the height, scale or position of the replacement dwelling will be resisted because such a proposal would not be comparable to the fall-back position.

Further advice

In any case where a developer wishes to convert a rural building to a dwelling house be it a Class Q prior approval or planning application, applicants are 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.chichester.gov.uk/preapplicationchargingscheme>

Conclusion

This document is intended to provide applicants and their representatives with a

clearer understanding of Chichester District 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 District 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 building's curtilage on 1st July 1948.