

# Chichester District Council

Planning Committee

08 September 2021

## CDC Guidance Note on Class Q Prior Approval (Agricultural to Residential changes of use) 2021

### 1. Contacts

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### 2. Recommendation

- 2.1. **That the Committee approves the Chichester District Council Guidance Note on Class Q Prior Approvals (September 2021) (see Appendix 1), to be used by the Council in determining all relevant prior approval and planning applications.**
- 2.2. **That the Divisional Manager for Development Management is authorised to make necessary minor changes to the guidance to take account of future pertinent case law or appeal decisions.**

### 3. Introduction and Policy Background

- 3.1. In 2013 the government introduced new permitted development rights to convert agricultural buildings to dwellings. The Town and Country Planning (General Permitted Development Order), 2015 (as amended) (GPDO) is the latest iteration of the permitted development order which automatically grants planning permission to convert agricultural buildings to dwellings and to carry out the necessary building operations to complete the change of use.
- 3.2. Prior to the conversion and associated works being undertaken, the developer must apply to the local planning authority to establish whether approval is required in respect of a number of key technical matters, however, as the development is permitted development under the GPDO, the Local Planning Authority (LPA) cannot resist the application in principle, even if the development appears to conflict with the Development Plan.
- 3.3. The GPDO contains limited information about how the regulations should be interpreted, or the extent of development permitted by the Order. As a result, a body of appeal decisions and case law has developed as LPA's across the country have sought to apply the 'new' permitted development rules. In addition, the government has created broad guidance within the National Planning Practice Guidance (NPPG). This growing amount of information provides helpful guidance that is used by officers when determining applications for prior approval; however agents, applicants and the broader public may not be fully aware of the information available.

- 3.4. In addition to applications seeking 'prior approval' it has become commonplace that developers follow up a successful prior approval application with an alternative new-build dwelling, once the principle of a residential dwelling on the site has been established. It is important to note that it is not necessary for a developer to acquire prior approval to establish a fall-back position that constitutes a material consideration, case law has established that the very existence of the ability to provide a further dwelling through the conversion of an existing building, provided for by the GPDO, is a fall-back position, unless it can be demonstrated that the limitations of the order cannot be met. Any alternative scheme must be comparable to the fall-back position, and locally set guidance will assist applicants and their agents to develop schemes that are likely to be acceptable.
- 3.5. In January 2020 a draft version of the guidance was presented to the Planning Committee, and following endorsement from the Planning Committee a public consultation took place from the 31 January 2020 to 16 March 2020. Following the consultation the GPDO has been amended 10 times, nitrate neutrality has become an issue for new developments that would increase the discharge of nitrates into Chichester Harbour thereby impacting upon the Solent Maritime Special Area of Conservation, and more recently Natural England has advised that any net increase in water demand from new developments within the Sussex North Water Resource Zone would impact upon the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites. These are all issues that have the potential to affect whether development is permitted under Part 3, Class Q of the GPDO and the guidance has been updated to reflect these matters. In addition recent appeal decisions have been taken into consideration in amending the guidance document.
- 3.6. Since 2015 a total of 154 applications for prior approval under Part 3, Class Q of the GPDO have been submitted to Chichester District Council. Of these approximately 80 have been granted and 45 refused with the remainder being invalid, returned, withdrawn or currently under consideration. Of the 45 refused applications the Council's records indicate 6 appeals have been lodged, with 4 being dismissed and 2 being allowed. In addition costs have been awarded on 1 occasion. Lessons have been learnt from the appeal decisions received, and the guidance has been updated to ensure it is reflective of the most up to date appeal decisions received by the Council. Notwithstanding the production of a guidance note to assist with the consideration of applications made under Part 3 Class Q of the GPDO and subsequent applications for new dwellings each application will be assessed on its own merits and where planning permission is sought in accordance with the Development Plan unless other considerations indicate otherwise. The document will however be a useful resource for developers considering a development within the area covered by the guidance note and also for officers in considering the proposals.

## 4. Consultation responses

4.1. Responses were received from Sidlesham Parish Council and 4 third parties.

### 4.2. Sidlesham Parish Council

Sidlesham Parish Council welcomes wholeheartedly the publication of these draft guidelines in the hope that the final guideline document will stem the flow of inappropriate Class Q applications in particular from former LSA smallholdings. These applications for conversions are far removed from the original idea of improving housing availability for rural workers on large farms. It has taken far too long for case law to correct the failings of this poor legislation so the publication of a guideline document for use prior to application is very welcome.

The main issue at stake is that of prior proof of convertibility. We believe that the onus is on the applicant to prove conclusively the conversion case. We would suggest that a Prior Approval Application is subject to an initial questionnaire. This is referenced to the NPPG statement that “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”. To date this right has been too easily assumed. We would expect CDC to counter this assumption via these guidelines.

Specific points:

#### **Agricultural use:**

The applicant needs to establish conclusively that the building was used for correct agricultural purposes until March 2013. Say-so and assumptions are not adequate in our view, tax or business accounts should be provided.

#### **Structural validation**

The Council has seen two of the recent submissions from structural surveyors. At best these are flimsy and do not prove the viability of the proposed conversion.

Our view is that the applicant and his client must in all cases provide calculations and evidence that;

- the foundations are capable of supporting the new structure on the existing footprint , including new roofing as you point out
- the original structure is capable of supporting the new fabric and would meet building regulations. Idem

Photographs of the key original structural components both exterior and interior should accompany the application. Ideally, a building inspector should review the plans and the structure prior to a planning approval decision. These are non-standard builds starting from a poor quality base (pig-sty or hen shed) and need to be viewed perhaps in a more circumspect manner.

Alternatively, an assessment of convertibility could be provided with a parallel building regs statement with calculations setting out the current state of the building and how the developer is intending to bring it to basic building regulations standard and what enhancements are proposed, all with the requisite calculations. In any case, CDC should reserve the right to inspect any building prior to approval and should advise structural / building engineers of their responsibilities.

We do like the tone of the CDC guidelines but we would ask that these positions are maintained rigorously.

### **Thresholds footprints and density**

We are pleased to see the maintenance of footprint requirements and non permit table extras.

We would like to see that, with particular reference to the small LSA sites in Sidlesham / Earnley, sufficient attention is paid to car parking space. Over-crowding on sites can lead to an aspect of domestication as you call it. We have seen evidence of this non-rural development in Fletchers Lane. We are at pains to maintain the character of the local area and some of the recent conversions have not been in sympathy with the LSA appearance.

We would query whether the provision of parking spaces does not imply a change of use for the land from agricultural and therefore requires planning permission. Similarly it is not clear that the provision of a perimeter around the residence is for maintenance and does not represent a garden space. We trust this will be clarified.

Consequently, we hope you will also advise applicants that extensions to the conversions do not come within the scope of this policy. There appears to have been a trend to apply for extensions once the initial phase is under construction / completed. We believe this should be resisted as it is not a conversion.

### **Conditions**

Flooding – it is possible that there may be applications for conversion in Flood Zone 3 meaning an increase in floor levels of 300mm above known flood levels. We would like to know how you feel this impacts on conversions and on building regulations in these cases

### **Fallback**

We are unclear about the provision of fallback after these new guidelines. We believe that if an agricultural building is not deemed suitable for conversion, then any application for its conversion should fall within the normal planning guidelines.

## Conclusion

As we stated at the outset of our comments we are delighted to see these guidelines. Although we have recommended changes in the above text we feel that these changes serve to reinforce the guideline principles that you have published.

- 4.3. The third party comments received include the following matters:
- a) Guidance is outdated
  - b) The maximum number of dwellings has increased to 5 dwellings and up to 865 sq m
  - c) Structural alterations are allowed
  - d) Partial demolition is allowed so a prior approval scheme could be smaller than the existing building, but not larger
  - e) Some strengthening works can take place and extensive internal works can be carried out including structural works
  - f) What is important is the building is being converted not re-built
  - g) Document omits installation of electrical services and partial demolition from list of permitted works
  - h) Internal works are not development and this should be clarified
  - i) Works reasonably necessary does not mean the bare minimum, they do not need to be absolutely necessary but within the range of what a reasonable person would choose
  - j) References to the structural works allowed should come from the updated NPPG guidance
  - k) What constitutes a conversion will require a case-specific assessment and will be a matter of fact and degree
  - l) It is an assumption that conversions should utilise existing openings and minimise new openings, openings should be reasonably necessary not absolutely necessary
  - m) It would be helpful for the guidance to explain how impacts on designated sites can be mitigated
  - n) Guidance ignores the principal that each application should be assessed on its own merits and if applications are refused simply because they do not reflect the scale and appearance of the existing building this would constitute unreasonable behaviour
  - o) Guidance is welcomed with amendments to address issues raised
  - p) Internal works that improve lateral stability have been found to be acceptable
  - q) Approach is draconian and contrary to the NPPG
  - r) A structural report should demonstrate the existing building is capable of taking the load associated with the conversion and any external works, but guidance cannot prohibit internal structural improvements
  - s) Guidance should not assume design and appearance will reflect rural character
  - t) The legislation does not require buildings to be redundant
  - u) Suggest postponing guidance until White Paper is published and government intentions on planning are known

## 5. The Content of the Guidance

- 5.1. The guidance note sets out the key requirements of Class Q and the guiding principles for how decisions will be made for applications submitted under this class of the GPDO. The guidance note explains what information will be required to demonstrate that a building is structurally capable of conversion. In addition, the guidance note establishes 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.

### Class Q of the GPDO

- 5.2 The guidance note explains what development is permitted development, what limitations there are and what conditions must be met, including the limitations on the number of units and the maximum size of units. The guidance explains the requirements of specific sections of Class Q including what the Council can consider when prior approval is sought; i.e.
- Highways and transport
  - Noise
  - Contamination
  - Flooding,
  - Whether the proposal would be impractical or undesirable as a result of its siting, and
  - Design and external appearance

### Structural information

- 5.3 The guidance explains what level of information will be required with a prior approval application to demonstrate that the building can be converted without the need for structural alterations. The key emphasis of the guidance is that the building should be capable of conversion without the need for significant alterations that would constitute a rebuild or significant structural works to support either the existing building or the building following alterations permitted by Class Q, such as the provision of a replacement roof covering that may be heavier than the existing roof covering. It is recognised that internal alterations can be made without planning permission, and it has been established at appeal that a first floor can be provided within an existing building. This will necessitate some structural works, however these should not be required in themselves in order to support the structural integrity or load bearing of a building. Nor should a new dwelling structure be created inside an existing building, because this would not constitute the conversion of the existing building.

### Subsequent planning applications

- 5.4 The Council has previously received a significant number of planning applications for alternative schemes to those permitted under Class Q of the GPDO. The permitted development provisions within the GPDO are a material consideration, and they carry significant weight when considering a planning application. Therefore the Class Q permitted development rights may mean that a new dwelling could be constructed in the rural area where it would not comply with the Development Plan. However, in most cases any subsequent applications should be comparable to the fall-back position permitted by the GPDO in the interests of protecting the character of the area; however an assessment will be made on a case by case basis. If it is clear that it would not be possible to implement a change of use under Class Q; for example if the building is a glasshouse or a pole barn that could not be converted to a dwelling in its current form and without substantial building works, then the GPDO provisions would not represent a fall-back position that carries any weight.

## **6. Conclusion**

- 6.1. The guidance reflects the Council's experience of dealing with a large number of applications for prior approval under Class Q and builds on the guidance contained within the NPPG and the decisions of the Planning Inspectorate and the courts. The guidance note will be reviewed and updated periodically, and should any new leading case law be relevant to how the Council deals with Class Q prior approval applications then this will need to be reflected in the guidance.
- 6.2. The guidance provides useful information for applicants, developers and officers involved with Class Q developments or subsequent applications. The Committee is, therefore, requested to note and endorse the content of the guidance which, where relevant, will be applied to all undetermined and future prior approvals and planning applications.