

Appendix 1

Planning Guidance Note

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

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1.0 Introduction

1.1 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 development consisting of;

(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; or

(b) development referred to in paragraph (a) together with building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

This provision is set out in Class Q, Part 3, Schedule 2 of the GPDO subject to a number of criteria being met and certain conditions being satisfied.

1.2 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>

1.3 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 a subsequent planning application be submitted for a new dwelling.

1.4 Please note that the onus is on the developer to ensure all requirements of the GPDO are met, not only those included in this guidance note.

2.0 **Existing building use**

- 2.1 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.

- 2.2 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:

1. *On March 2013; or*
2. *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*
3. *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 begins.*

- 2.3 Where a building is not in an 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, and that it has not subsequently been used for any other purpose. The Council, where necessary, will seek evidence as to compliance with this requirement and where there is continuing doubt will decline to accept that the GPDO permission applies.

- 2.4 If the active use of the building for agricultural purposes has ceased a developer may find it helpful to apply for a lawful development certificate to establish the lawful use of the building before submitting an application for prior approval to convert the building. However this is not a requirement. More information about lawful development certificates can be found online: [Lawful development certificates - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

3.0 Thresholds

3.1 Following amendments to the GPDO in 2018 Class Q now permits a combination of larger dwellinghouse (over 100 sq. m.) and smaller dwellinghouses (below 100 sq. m). The regulations state

- larger dwellinghouses cannot exceed 465 sq. m.,
- that no more than 3 larger dwellinghouses are permitted (cumulatively floor area cannot exceed 465 sq. m.), however,
- in combination a total of 5 larger and smaller dwellinghouses (which cannot exceed 100 sq. m. per dwelling) are permitted

3.2 It is important any application submitted does not exceed the floor area and maximum unit number across the agricultural holding as stated within the GPDO, otherwise planning permission will be required.

4.0 Restrictions

Specific to Part 3, Class Q of the GPDO

4.1 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) amongst others.

Relevant to all parts of the GPDO

4.2 The GPDO includes a number of restrictions to what development may or may not benefit from permitted development rights, 2 key restrictions relevant to applications for prior approval under Part 3, Class Q of the GPDO are provided below.

- As stated within Article 3.(1) of the GPDO planning permission granted by the order is subject to the provisions of regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017. This means it must be demonstrated that the proposed development would not have likely have a significant effect on a designated site for the development to benefit from permitted development. Any proposal that would have a likely significant effect on a designated site such as those listed below is not permitted development and will require a planning application:
 - Chichester and Langstone Special Protection Area (SPA)
 - Chichester Harbour Ramsar
 - Chichester Harbour Special Area of Conservation (SAC)
 - Pagham Harbour SPA
 - Solent Maritime SAC
 - Arun Valley SPA
 - Arun Valley SAC
 - Arun Valley Ramsar

Please note this list is not exhaustive.

- As stated within Article 3.(9A) and (9B) of the GPDO any new dwellinghouse is not permitted where;
 - The gross internal floor area is less than 37 square metres in size; or
 - The development does not comply with the nationally described space standards issued by the Department for Communities and Local Government on 27 March 2015 (read together with the notes dated 19 May 2016 which relate to it)

5.0 **Building operations and structural stability**

- 5.1 The GPDO grants permission for the conversion of an existing building to residential. The permitted development rights assume that the building is capable of conversion; although the NPPG indicates that for the building to function as a dwelling some building operations that would affect its external appearance would be needed and permitted by the GPDO. The NPPG also accepts that some internal structural works may be required. However it is only where the existing agricultural building is structurally strong enough to take the load of any works proposed that the building would benefit from the permitted development right to convert it to a dwelling. What constitutes a conversion can be open to interpretation and it is assessed on a case by case basis depending on the nature of construction, condition of the building and the extent of works proposed. The purpose of this guidance is to highlight issues that the Council will consider when an application for prior approval under Part 3, Class Q is submitted.
- 5.2 Paragraph 105 of the NPPG provides guidance on what is permitted under the GPDO.

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

- 5.3 Based on the guidance and 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 \(Admin\)](#), it is clear that there is a distinction between conversion and rebuilding. In applying the principles of this judgment proposals involving significant new building works because the building is not capable of conversion without them would likely fall outside the scope of Class Q.
- 5.4 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 materially different size and form would likely exceed the works reasonably necessary to convert the building. This would not meet the provisions of the GPDO and the Council would likely decide planning permission would be required.
- 5.5 Any development which comprises structural elements will only be permissible under Class Q where it can be clearly demonstrated that the new structural works meet the guidance above and they are not required to take the loading of any external part of the building. As stated in the guidance new internal walls and mezzanines are acceptable, however if new structural works are proposed for the purpose of holding up the existing structure or the proposed replacement walls, roofs etc and they are required to making the building capable of conversion then the proposal would go beyond what is permitted development under Class Q.
- 5.6 It is not possible to provide an exhaustive list but following the guidance within the NPPG, some typical examples of situations where works fall outside the provisions of Class Q because the building is not capable of conversion or the works go beyond the conversion of a building 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 building that is largely open sided and therefore is not capable of functioning as a dwellinghouse*
 - *internal walls required/designed to provide lateral stability, strengthen the existing structure or take any load from the roof or other parts of the building*
 - *provision of a new building within the shell of an existing structure*

- 5.7 If new structural elements are proposed 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 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.
- 5.8 Potential applicants are reminded that the onus is upon them to demonstrate conformity with the provisions of the legislation, and if the building is not capable of functioning as a dwellinghouse unless works exceeding those reasonably necessary works and in line with the guidance contained in the NPPG are carried out the Council would decline to accept that the GPDO permission applies.
- 5.9 Further to the above, any alterations to the building area limited to the external dimensions of the existing building at any given point. This means proposals cannot include external features such as chimneys, flues, external cladding that extends beyond the existing envelope or raised platforms, steps and ramps. 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 Council would decline to accept that the GPDO permission applies.

6.0 Conditions

6.1 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 in some circumstances it may be appropriate to impose conditions requiring a professional assessment of the site, and if contamination is found, further investigation and a remediation scheme 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.

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 recommended that any conversion should utilise existing openings and minimise the number of new openings. Where new openings are required it is recommended they should be appropriately designed so as to reflect the building's 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.

- 6.2 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. Each application will be assessed on its own merits on a case by case basis having regard to the character and quality of the existing building, the location and character of the surrounding area, and site constraints. It will not always be necessary to support Class Q submissions with technical reports. Advice on what information would be helpful to support an application for prior approval can be provided via the Council's Pre-Application advice service.

7.0 Other matters

- 7.1 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. Special Protection Areas, Special Areas of Conservation and Ramsar sites) 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.

- 7.2 Key issues to consider include:
- The impact of recreational disturbance from new dwellings proposed within the zones of influence for the Chichester and Langstone Harbours and Pagham Harbour SPA. Depending on the location of the site a financial contribution to the Bird Aware Solent joint mitigation scheme or the Pagham Harbour joint mitigation scheme will be required to mitigate the likely significant effect.
 - The impact of the discharge of nitrates from new dwellings to Chichester Harbour designated sites and the Solent Maritime Special Area of Conservation. This will include developments discharging via mains drainage to Chichester, Bosham and Thornham Wastewater Treatment Works (WwTW) and developments with non-mains drainage that will discharge into Chichester Harbour. Developments must be nitrate neutral to mitigate the likely significant effect
 - The impact of new dwellings within the North Sussex Water Resource Zone (NSWRZ) where an increase in water demand would impact upon the Arun Valley SPA, SAC and Ramsar sites. Developments must be water neutral to mitigate the likely significant effect.
- 7.3 If mitigation is not provided the Council would decline to accept that the GPDO permission applies. Please note a planning obligation is likely to be required to secure the relevant mitigation, and it recommended that this is discussed with the Council before submitting an application. Advice can be provided via the Council's Pre-application advice service prior to submitting a formal application.
- 7.4 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>
- 7.5 Information about Recreational Disturbance and Nutrient Neutrality can be found on our website:
[Supplementary planning documents and policy guidance: Chichester District Council](#)

8.0 Subsequent applications

- 8.1 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, it is important that the character of rural areas is protected and it is important that the scale, design and appearance of any new dwelling are sensitive to the characteristics of the site and its surroundings.
- 8.2 Applicants are advised to consider carefully relevant planning policies within the Development Plan (including made Neighbourhood Plans), Supplementary Planning Documents and Village Design Statements before submitting an application.
- 8.3 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, in order to protect the character and appearance of our rural areas any replacement dwelling should reflect the scale, design and proportions of the existing building. In exceptional circumstances there may be more flexibility, however developments that result in a material increase the height, scale or position of the replacement dwelling that would be harmful to the character and appearance of the area will be resisted. The fall-back position whilst a consideration would not likely represent a material consideration that would outweigh any harm identified as a result of the proposed development.

9.0 **Further advice**

9.1 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. Whether amendments to the scheme would be advisable;
3. The most appropriate process to follow;
4. Whether the proposed mitigation for ecological impacts is likely to be acceptable (although you may also need to seek advice from Natural England), and
5. Information which may be required under that procedure.

9.2 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>

10.0 **Conclusion**

- 10.1 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 decision both within the District and nationally. However each application will be assessed on its own merits. 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 buildings curtilage on 1st July 1948.