

Recommendation Report for

REF NO: WA/108/18/PD

LOCATION: Cherry Tree Nursery
Eastergate Lane
Eastergate
BN18 0BA

PROPOSAL: Notification for Prior Approval under Class Q for a Proposed Change of Use of Agricultural Building to 5 No. Dwellinghouses (Class C3) & associated works

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION Conversion of the existing glasshouse into five single storey dwellings, 3 of two double bedrooms, one four and one five bedroom. The adjacent greenhouse is to be demolished and each unit would have an associated garden area. Walls would be inset behind angled glass elevations which are to be retained and doors inserted. The new wall would be clad in boarding. A stud wall and plasterboard would be provided internally. New external cladding will be added to the exterior plus new windows, doors and a new roof covering. Insulation will be added to the structure between internal and external walls. 3 of the dwellings will have parking provided.

SITE AREA 748 sqm

RESIDENTIAL DEVELOPMENT DENSITY (NET) 6 dwellings per hectare

TOPOGRAPHY Predominantly flat

TREES None of any significance affected by the proposed development.

BOUNDARY TREATMENT Ranch style fencing, hedging and trees to the side boundaries

SITE CHARACTERISTICS Cherry Tree Nursery has historically been a horticultural nursery, located on the north side of Eastergate Lane. Use of the glasshouse ceased some time ago and the area is overgrown and the structures are falling into disrepair. Much of the area adjacent to the south elevation of the structure is used for storage

CHARACTER OF LOCALITY Predominantly rural with a small number of dwellings and equestrian uses

RELEVANT SITE HISTORY

WA/98/16/CLE	Application for a Lawful Development Certificate for an existing use of land for siting of 1No residential mobile home.	Approve 05-10-17
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WA/99/16/CLE	Application for a Lawful Development Certificate for an Existing use of land for the storage of boats & cars (Use Class B8).	Approve 19-09-17
WA/34/12/CLE	Application for a Certificate of Lawfulness for an Existing Use of land for the storage of fairground and amusement arcade features and materials and the parking of up to 5 lorries. The buildings are used as offices for the fairground and amusement arcade business.	Approve 09-10-12

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Walberton Parish Council

Objection

- The current greenhouse foundations are not substantial and are therefore not suitable for housing.
- Challenge the alterations to the structure to provide sufficient insulation and internal strength, which will effectively require a rebuild.
- Inappropriate location for houses to be built on a site which is/has been used for storage and landfill.
- The site has been contaminated with asbestos and tyres.
- Where will the septic tank for the new houses be located?
- The site is adjacent to Wandleys Copse which is classified as ancient woodland. Request that appropriate surveys are carried out for bats, dormice, reptiles, great crested newts, badgers, owls.
- The change of use is contrary to Walberton's Neighbourhood Plan policies VE2 "Horticultural development" and CL 1 "Businesses".
- Expansion and improvement of other horticultural businesses in the parish proves a need for horticulture to be supported. See WA/112/18/CLE, WA/67/17/PL, WA/41/00, WA/67/17/PL and WA/92/17/PL

COMMENTS ON REPRESENTATIONS RECEIVED:

The Local Planning Authority is only able to consider the following issues in the determination of this application:

- (a) transport and highways impacts of the development;
- (b) noise impacts of the development;
- (c) contamination risks on the site;
- (d) flooding risks on the site;
- (e) whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
- (f) the design or external appearance of the building,

The Neighbourhood Plan policies and need for support of horticultural premises cannot be considered.

The applicant has not supplied any surveys relating to bats or say barn owls but it is not possible to consider ecology under the remit of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the building is not a traditional barn and is completely enclosed by glass with the only openings being a couple of roof windows and the doors. Although wildlife could enter the building, it is not considered that it would be an ideal location for a roost due to the exposed nature of the interior. It is therefore considered that the building would have negligible potential for bats or owls. Informatives could be included to alert the applicant to their obligations under the Wildlife and Countryside Act 1981.

CONSULTATIONS

Environment Agency
WSCC Strategic Planning
Environmental Health

CONSULTATION RESPONSES RECEIVED:

County Highways - No Objection .

As part of the prior approval matters relating to highways and transport can be considered.

However these are restricted as to whether there is a material increase or a material change in the character of traffic in the vicinity of the site. The existing access would be sufficient to allow two cars to pass. This allows a manoeuvring vehicle to wait off of the highway and allows the free flow of traffic along Eastergate Lane. Adequate visibility can be obtained in the leading direction (to the west), to the east the road layout obstructs visibility slightly as the road curves. It was observed that vehicles approaching from the east were slowing and approached with caution.

8 Parking spaces are proposed. If they are unallocated the 8 parking spaces are considered to meet the demand generated by the proposal. Overspill parking would not be anticipated to occur on Eastergate Lane due to the length of the access road from the highway to the site and the nature of the highway at this point.

The proposal is not anticipated to result in a material increase or change in the character of traffic. Consequently, no highway concerns would be raised. In principle, the current GPDO gives limited ability to consider wider highway and transport impacts beyond those set out.

Environmental Health - No response

Environment Agency - No response

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:
Outside built up area boundary

DEVELOPMENT PLAN POLICES

PLANNING POLICY GUIDANCE:

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND**PERMITTED DEVELOPMENT BACKGROUND:**

This application falls to be determined under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in respect of:

- (a) A change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwelling houses) 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.

The principle of the development is not in dispute. Class Q allows for the change of use (and the associated limited building operations) except where (as set out in Q.1):

- (A) the site was not used solely for an agricultural use as part of an established agricultural unit:
 - (i) on 20th 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 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;
- (B) in the case of -
 - (i) a larger dwellinghouse (100m²-465m²), within an established agricultural unit
 - (aa) the cumulative number of separate larger dwellinghouses developed under Class Q exceeds 3; or
 - (bb) the cumulative floor space of the existing building or buildings changing use to a larger dwellinghouse or dwellinghouses under Class Q exceeds 465 square metres;
- (C) in the case of -
 - (i) a smaller dwellinghouse (less than 100m²), within an established agricultural unit
 - (aa) the cumulative number of separate smaller dwellinghouses developed under Class Q exceeds 5; or
 - (bb) the floor space of any one separate smaller dwellinghouse having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 100 square metres;
- (D) the development under Class Q (together with any previous development under Class Q) within an established agricultural unit would result in either or both of the following -
 - (i) a larger dwellinghouse or larger dwellinghouses having more than 465 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
 - (ii) the cumulative number of separate dwellinghouses having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeding 5;
- (E) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;
- (F) less than 1 year before the date development begins -
 - (i) an agricultural tenancy over the site has been terminated, and
 - (ii) the termination was for the purpose of carrying out development under Class Q, unless both the landlord and the tenant have agreed in writing that the site is no longer required for agricultural use;

(G) development under Class A(a) or Class B(a) of Part 6 of this Schedule (agricultural buildings and operations) has been carried out on the established agricultural unit -

(i) since 20th March 2013; or

(ii) where development under Class Q begins after 20th March 2023, during the period which is 10 years before the date development under Class Q begins;

(H) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;

(I) the development under Class Q(b) would consist of building operations other than:

(i) the installation or replacement of:

(aa) windows, doors, roofs, or exterior walls, or

(bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and

(ii) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(I)(i);

(J) the site is on article 2(3) land;

(K) the site is, or forms part of:

(i) a site of special scientific interest;

(ii) a safety hazard area;

(iii) a military explosives storage area;

(L) the site is, or contains, a scheduled monument; or

(M) the building is a listed building.

In addition, the curtilage must comply with the interpretation provided at Part 3, Paragraph X of the GPDO 2015 which states that: "curtilage means, for the purposes of Class Q, R or S only-

(i) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or

(ii) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building,

.... whichever is the lesser";

Where a proposal is permitted development in accordance with the above, Class Q (paragraph Q.2 (1)) states that an application must be made to determine whether or not the prior approval of the Council will be required. The Council can only have regard to the following impacts:

(a) Transport and highways impacts of the development;

(b) Noise impacts of the development;

(c) Contamination risks on the site;

(d) Flooding risks on the site;

(e) Whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order, and

(f) The design or external appearance of the building,

The Order also states that the provisions of Paragraph W shall apply in relation to any application. Part (10) of paragraph W includes the following: "The local planning authority must, when determining an application-

- (a) take into account any representations made to them as a result of any consultation under sub-paragraphs (5) or (6) and any notice given under sub-paragraph (8); and,
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012(a), so far as relevant to the subject matter of the prior approval, as if the application were a planning application;"

It is considered that this allows the local planning authority to have regard to any of the representations received and also to the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) but only in respect of the 6 issues set out above. Advice has previously been received from the DCLG which confirmed that it is not possible to refuse prior approval on the basis of an issue/impact not listed within the Order. The Local Planning Authority has 56 days to provide its comments to the applicant's agent or it is deemed that they have no objection. This period expires on 06 February 2018.

NOTE ON BUILDING WORKS:

As noted above, Q.1 (I) allows for the installation or replacement of walls and roofs. Q.1 (I) (ii) also allows for partial demolition in order to facilitate the building operations allowed by Q.1 (I) (i). It is also noted that section 55(2)(a) of the Town and Country Planning 1990 Act provides that the carrying out, for the maintenance, improvement or other alteration of any building, of works which affect only the interior of the building, or do not materially affect the external appearance of the building, are not to be taken for the purposes of the Act to involve development of the land.

It is also noted that paragraph 105 (Reference ID: 13-105-20180615) of the Government's online Planning Practice Guidance (PPG) states that:

"Building works are allowed under the right permitting agricultural buildings to change to residential use. 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."

And that:

"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."

Therefore, new walls & roofs, windows and doors can be added to the structure and this would still be considered a conversion. However, the building in this particular instance would require new walls and roofs. The glass would only be retained to provide a footprint/dimensioned framework for the

development. A new building would effectively be constructed around it and its retention would not be necessary to accommodate the development. The amount and extent of alterations required would result in replacement buildings. The internal works would amount to development under the Act and the completion of the works would in itself constitute a material change of use.

COMMENT ON CASE LAW

The relevant parts of the Town and Country Planning (General Permitted Development) (England) Order 2015 are Articles 2, 3, 7, Schedule 2, Part 3, Class Q and Schedule 2 Part 3 (Class V) paragraph W.

The Local Planning Authority has sought legal advice in relation to the case quoted by the agent. He refers to the case of *Hibbitt v Secretary of State for Communities and Local Government* EWHC 2853 (Admin) where, an inspector accepted that the building, which was described as follows "open sided steel framed structure with a monopitch roof. It has a concrete floor slab and six steel uprights which span to support a corrugated fibre roof, supported on timber cross beams. It is open to two sides with a single skin steel panel to the rear and the long part of one further side. This sits above a concrete panel to around a metre in height. The concrete panel does not appear to be attached to the floor slab." was an agricultural building, that the structure would be sufficient to bear the load of the proposed development and that the works proposed were reasonably necessary but concluded that the works were so extensive as to amount to rebuilding and, therefore, did not fall within Class Q(b).

The Court found:

a) that "conversion" was an overarching requirement of Class Q and was not limited by NPPG paragraph 105 or Class Q 1(i);

b) that a conversion is conceptually different from a "rebuild" and "In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in " agricultural building ". There will be numerous instances where the starting point (the " agricultural building ") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than " rebuild ", which also encapsulates what the Inspector had in mind, might be " fresh build " since rebuild seems to assume that the existing building is being "re" built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building."

c) that there was not need to formally define the distinction between conversion and rebuild. The term "conversion" had to be understood in a planning context and not simply from its dictionary definition.

d) "argued that the existence of Paragraph 55 was itself a reason to avoid a wide interpretation of Class Q. Class Q permitted development classes which were intended to be suitable for fast track, clear cut, developments; not short cuts for complex cases which might raise significant issues under Paragraph 55. When the present development was measured against the principles in paragraph 55 it could be seen that the development raised an issue about the need to " avoid in the countryside " new isolated homes. Clearly a balance had to be struck between the more detailed and rounded assessment under the application route and the automatic approval under the permitted development route. But, nonetheless, these considerations militated in favour of only approving clear-cut cases and leaving more marginal cases to the ordinary planning system, and therefore against a wide construction of Class Q such as that advocated for by the Claimants which would permit wholesale circumvention of Paragraph 55. A proper balance was struck between the need for speed and certainty and a fuller evaluation. A conversion is

conceptually different from a "rebuild" and "it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in " agricultural building ". There will be numerous instances where the starting point (the " agricultural building ") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. In fact a more apt term than " rebuild ", which also encapsulates what the Inspector had in mind, might be " fresh build " since rebuild seems to assume that the existing building is being "re" built in some way. In any event the nub of the point being made by the Inspector, in my view correctly, was that the works went a very long way beyond what might sensibly or reasonably be described as a conversion. The development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building."

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ANALYSIS OF THE PROPOSAL

This application to the Council under Class Q2, is to determine whether or not prior approval will be required as to any of the matters listed in Q.2(1).

Consultation with the Parish Council has led to a response which raises issues in relation to the strength of the foundations, previous use of the site for boat, car and mobile home storage and landfill, as well as possible contamination with asbestos and tyres.

Paragraph W provides that the Council:

a) (3) may refuse an application where, in the opinion of the authority..
 (a) the proposed development does not comply with, or
 (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question." Or

b) (13) may grant prior approval unconditionally or subject to conditions.

The Council, under Paragraph W, may require the developer to submit such information as it may reasonably require in order to determine the application.

In this case it would be appropriate to seek additional information in relation to the load bearing of the current structure, the foundations and the amount of the current structure that is to be removed. This would assist in determination as to whether the proposal is a conversion, and therefore within Class Q or

a fresh build / rebuild, which would take it outside of Class Q. Additional information in respect of possible contamination of the site particularly with respect to asbestos, tyres and the land fill referred to by the Parish Council could also be provided and assessed.

When considering the application for prior approval the Council needs to consider:

- a) whether the glass house is an agricultural building;
- b) whether the proposed development is conversion from an agricultural building to dwellinghouses, or is it a fresh build / rebuild;
- c) each of the circumstances listed in Class Q.1; and
- d) the matters that are being specifically under the prior approval requirement.

In the case of Hibbitt the Court clearly came to the conclusion that it is a "matter of legitimate planning judgment as to where the line is drawn" between conversion and fresh build / rebuild.

f, prior to the expiry of the initial 56 days the Council is satisfied that the proposal is not consistent with a conversion under Class Q then it can refuse to grant prior approval, but in doing so it is important that it includes a decision that prior approval is required.

ANALYSIS OF PERMITTED DEVELOPMENT RESTRICTIONS:

(A): The land is known to have previously been in use a horticultural nursery. It was last used some time after 2010/11 and so was not in use on 20/03/13.

(B) - (D): The development proposed consists of both a "smaller dwellinghouse" and a "larger dwellinghouse". Neither part of the proposal exceeds the maximum number of dwellings and neither exceeds the maximum floorspace.

(E) - (F): The site is not occupied under any agricultural tenancy and has not had a tenancy on it within the last year.

(G): No development under class A or B of the GPDO has taken place on the site

(H): The proposed works to the exterior do exceed the existing external dimensions. The section drawing does show that the cladding will be affixed to the outside of the glasshouses, the cladding does extend marginally beyond the extent of the existing glass.

(I): The proposal includes new doors, windows, exterior walls and roofs. The structure is a glasshouse and it has not been satisfactorily evidenced with structural reports that it is capable of being converted and taking the loadings from the new materials without modification. The applicant has supplied references to applications approved by Chichester DC where it was accepted that new doors, windows, exterior walls and roofs do not take the proposal outside of the permitted development regime. However this proposal requires new internal walls, external walls and roofs which are considered to constitute rebuilding based on the information submitted.

(J): The site is not on article 2(3) land.

(K): The site is outside of any of these areas.

(L): There are no scheduled monuments on site.

(M): The building is not listed.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

Transport & Highway Impacts:

The Highway Authority do not consider that the change to 5 residential units would have an adverse impact on the safety of the local highway network.

Contamination & Noise Risks:

ADC Environmental Health Officers have not responded to the consultation therefore it is not possible to comment on contamination issues. In respect of noise, there are existing dwellings nearby and therefore, the typical noise associated with a dwelling would not be harmful to the character of the area and is unlikely also to adversely affect any of the existing dwelling.

It is noted that the Parish Council are concerned about potential contamination of the site and further information should be submitted by the agent to address these.

Flood Risk:

The site lies in Flood Zone 1 and is at low risk of flooding. No comment has been made in relation to the proposed development by the Environment Agency.

Design:

It is considered that the external appearance is constrained by the shape & size of the existing glasshouses and therefore it is difficult to propose a building that is of high design quality or would be in character with existing residential buildings in the locality. The use of cladding would be appropriate for this rural location. However, it has not been satisfactorily demonstrated that the building is structurally sound and capable of conversion in the manner indicated. The proposal is not therefore acceptable in terms of its design and external appearance and prior approval will be required.

SUITABILITY OF THE SITE:

Class Q (paragraph Q.2 (1)) advises that these applications can be determined with regard to whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a residential use.

Guidance within the Governments online Planning Practice Guidance is as follows:

Paragraph 108 (Reference ID: 13-108-20150305): "The permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead, the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house."

Paragraph 109 (Reference ID: 13-109-20150305):

"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.

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. It is not considered that the location is impractical or undesirable.

Summary:

It is therefore considered that this use is unacceptable with regard to the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in that there are contamination and design issues.

HUMAN RIGHTS ACT

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

OBJECTION

- 1 Part 3, Class Q.1 (c) and (f) and of the Town and Country Planning Development) Order 1995 as amended can require an application for prior approval where the developer has provided insufficient information to enable the authority to establish whether there are (c) contamination risks on site and whether (f) the design or external appearance of the building is acceptable

In this case;

(c) a Contamination Assessment in respect to asbestos and tyres
&

(d) a report, relating to the structural integrity, foundations present and the ability of the structure to take the load of the roof and alterations as proposed and the extent of the existing structure to be removed have not been submitted and therefore prior approval is required as the proposed development is not permitted development for the above reasons (insufficient information).

- 2 INFORMATIVE: On a preliminary consideration the Council is not satisfied that the proposal is a conversion and therefore, is not satisfied that the application falls within Class Q.