
Site Address:	Meadow Farm Nursery, Woodgaston Lane, Hayling Island, PO11 0RL		
Proposal:	Prior Approval for Change of use from agricultural building to 1No. dwellinghouse.		
Application Type:	Prior App'val C of U Agricultural to C3		
Application No:	APP/23/00324	Expiry Date:	20/06/2023
Applicant:	Mr D Myatt and Ms G Newell		
Agent:	Mr S Jupp	Case Officer:	Tina Pickup
Ward:	Hayling East		

Recommendation:

1 Site Description

- 1.1 The red lined application site relates to a timber clad building within the wider blue lined Meadow Farm Nursery located on the eastern side of Woodgaston Lane. The nursery site extends to some 2.25 acres and until Covid was used for the growing of plants with sales to the public. As a horticultural business the use comprised an agricultural use. In 2003 planning permission was granted for a dwelling in the south east corner of the site, which is tied via a Section 106 Agreement to be occupied by person(s) who are currently working or employed at the adjoining business premises known as Meadow farm Nursery (02/56431/003).
- 1.2 A Certificate of Lawfulness was also granted for the use of a building within the site to the north of the agricultural tied dwelling as a single residential dwelling in April 2018 (see APP/17/01315). Additionally permission has been granted for land in the south-western corner of the site to be used as a scaffold yard by Mr P Newell whilst he lives at the nursery site (under APP/18/01263). The scaffold yard was then proposed to be relocated under APP/19/00785, and although permission was granted, this does not appear to have been implemented.
- 1.3 However the horticultural use of the site has currently ceased and the site appears vacant and un-used. This means that the occupation of the dwelling, known as Saltings Cottage, is potentially in breach of the terms of the S106 agreement. The building the subject of this prior approval application was originally used as a germination room, sales area, staff room and offices, toilet and store. The submission indicates that the building was taken out of agricultural use in October/November 2012 for refurbishment. However it is known that most of the building was subsequently used as a tea room, a Class E use.
- 1.4 The site lies outside of the defined built up area and therefore within the non-urban area of Hayling Island where more restrictive rural policies apply in terms of housing. There are some protected trees on the sites boundaries, and the fields immediately to the east are designated 'secondary support' areas and 'low use' land for the Solent Waders and Brent Goose Strategy.

2 Planning History

APP/15/00427 - Change of use from agricultural building to a flexible commercial use (within class B8, Storage and Distribution) subject to prior approval covering flooding,

highways and transport issues, noise impact and contamination risks on the site.,
WD,15/05/2015
APP/17/01315 - Application for certificate of lawful existing use relating to use of building as a single dwellinghouse, PERM,05/04/2018
APP/18/01263 - Continuation of use of land in south west corner of nursery as a scaffold yard., PERM,14/03/2019
APP/19/00320 - Raise ridge height of roof to incorporate living accommodation at first floor level to include 3No. dormers., PERM,22/05/2019
APP/19/00785 - Re-siting of scaffold yard approved under planning permission
APP/18/01263., PERM,23/10/2019

3 **Proposal**

Prior Approval for Change of use from agricultural building to 1No. dwellinghouse.

4 **Policy Considerations**

The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended:
Schedule 2, Part 3, Class Q - Agricultural buildings to dwelling houses

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 **Statutory and Non Statutory Consultations**

Environmental Health

whilst no serious objection from a noise and nuisance perspective, it would have been pragmatic of the applicant to provide details of the sound insulation performance proposed - therefore recommend sound insulation condition and Informatives regarding hours of work, bonfires and dust control.

Hampshire Highways

no objection from a highway perspective; access in and out of the site is unchanged, utilising the existing access for the Meadow farm Nursery, and adequate parking is proposed/available within the site.

6 **Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 5

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 2

Comment	Officer Comment
North East Hayling Residents Association make 2 observations:	

a} It is stated that the building has not been used for agricultural purposes for 10 years but until it closed we believe a Tearoom operated here and we believe an office linked to the Nursery.	Noted - see section 7
b}The statement states there are no other dwellings on site but we believe there is planning history here with other dwellings and other enterprises .	Noted - see section 1 above
application should not be passed under agricultural change of use and should be subject to a full planning application.	must be determined as submitted as a prior approval
site plans misleading & incorrect - fail to show the path that runs behind the building	no formal right of way or footpath, just an internal gap/path
Meadow Farm Nursery not a farm and never has been a farm; originally it was a summer grazed field bought from a farmer as a garden extension;	horticulture is a form of agriculture for planning purposes
part of the building in question was a shed that has been added to without planning consent and left unchallenged by HBC planning department, despite notification	Noted - would appear the original shed has grown over time without any form of planning consents
the shed was first converted to house the cash registers for the nursery business; then an office was added. This was extended over the years to a fully functioning kitchen and a seated cafeteria - which I do not believe is an agricultural building.	Noted - see section 7
No planning change of use submitted even though Council were made aware	Noted, no record of any change of use to a cafe application
Clearly this was long term plan	
is another cesspit going to be installed as no mains drainage on the site?	Not relevant to this prior approval application - would be covered under Building Regs
Another shed already converted to a separate dwelling which was rented out illegally	now lawful by virtue of APP/17/01315
Why weren't the terms of Saltings Cottage acted upon at the time of the agreement?	The S106 legal agreement requires ongoing compliance with an active business - <i>note, since the business now ceased then the terms of the S106 are potentially breached - a matter for the</i>

	<i>Enforcement team to investigate</i>
Have structures been assessed under all the terms that a new build would be?	no - as a prior approval can only consider certain issues
haulage company running from site following closure of the scaffolding company - no change of use application for this either.	Noted - a matter for the Enforcement team to follow up

7 **Planning Considerations**

- 7.1 Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) sets out that any permitted development is subject to the provisions of Regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (Habitats Regs). In turn the Habitats Regs sets out at Reg 75:

"75. It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site, must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority)."*

- 7.2 Since this site is close to the Chichester & Langstone Harbours SPA/Ramsar sites then this prior approval development which would result in a net gain of overnight accommodation, could have the potential to have a significant effect on the integrity of those sites, from both recreational disturbance and water quality issues. In addition the site is close to both a Secondary Support Area and Low Use Area for Solent Waders and Brent Geese, and the disturbance from any associated construction works would have the potential to have an adverse effect on the function of this land. Therefore, Regulation 77 requires a Habitats Assessment to be undertaken and the LPA to consult with Natural England and take into account any representations made by Natural England; the LPA can only approve a development after having ascertained that the proposal will not adversely affect the integrity of the site. Development cannot be begun until this process is completed.

- 7.3 Therefore the relevant considerations in the determination of this application are:

- (i) Criteria of Schedule 2, Part 3, Class Q of the GPDO
- (ii) Prior Approval for Transport and Highways Impacts; Noise Impacts of the Development; Contamination Risks; Flooding Risks; whether Location makes the change of use Impractical or Undesirable; Design & External Appearance; and Natural Light for Habitable rooms
- (ii) Habitats Regulations Assessment
- (i) Criteria of Schedule 2, Part 3, Class Q of the GPDO

7.4 Class Q Permitted Development is stated as:

Q. 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 (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 (dwelling houses) of that Schedule.

7.5 It is for the LPA to assess whether the proposal meets the criteria of Class Q1. to be considered permitted development. In this instance the criteria of Q.1. can be assessed as follows:

Development not permitted

Q.1 Development is not permitted by Class Q if—

(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;

Whilst the overall site was in use for agricultural purposes in March 2013, the submission confirms that the building the subject of this application was taken out of agricultural use in October/November 2012 for refurbishment. Therefore as the red lined application relates to the building, then clause (a) (i) is not relevant and instead clause (a) (ii) is engaged, which requires the last use to have been for agricultural purposes.

The submitted Planning Statement at paragraph 2.3 and 4.7 states that the "the subject building was taken out of agricultural use in October / November 2012 for refurbishment. Accordingly on 20th March 2013 it was not in use but was last used for agricultural purposes." The planning statement is however absent in any commentary on the subsequent use of the building after the refurbishment in 2013. There is no information provided on the use of the building since October/November 2012, but the Planning Statement confirms the building was taken out of agricultural use.

From local knowledge and third party comments it is known that the building was subsequently used as a cafe and tea room. It is known to have been a busy and popular tea room, which is understood to have closed during Covid and not re-opened. A site visit on 9/5/2023 showed the entrance door glazing still advertising "Meadow Farm Nursery Tea Room, Open daily". Although not currently in use, the customer counter with piles of crockery etc, and much of the kitchen equipment, was still inside and evident of the last use of the application building as a tea room.

A tea room and cafe is a Class E use and not an agricultural use. It could be argued that the tea room was an ancillary function of the agricultural nursery use of the site, but it is understood that the tea room was quite a significant element of the business with a large area of outside seating and arguably a destination in its own right. Whilst no planning record exists for a change of use of the building to a cafe, it is the opinion of the Local Planning Authority that due to the scale of the tea room business as more

than an ancillary function, then planning permission would have been required and should have been obtained. As such the Local Planning Authority are of the view that the site has a mixed use i.e. an agricultural nursery with Class E tea room/cafe, with the cafe operating from the subject building (as well as the subsequently approved scaffold yard use).

No evidence has been provided in the supporting documents about the use of the building as a tea room whatsoever, with no evidence to demonstrate whether the use as a tea room resulted in a mixed use or was still part of the agricultural holding. Therefore it is the opinion of the LPA that, as evidenced from third party comments, local knowledge and recent photos of the site, on the balance of probability, the last use of the application building was that of a Class E tea room and the application building was not last in use for agricultural purposes.

Since class Class Q relates to the change of use of a building from an "agricultural building" and the last use of the subject building was as a Class E tea room, then the Local Planning Authority are of the view that clause (a) (ii) is failed - the building was not last in use for agricultural purposes.

7.6 *(b) in the case of—*

(i) a larger dwellinghouse, within an established agricultural unit— (NB larger dwellinghouse defined as more than 100sqm and no more than 465sqm)

(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;

The floor space of the building to be converted would be 182.2sqm and as such would constitute a 'larger dwellinghouse'. The site has two other dwellings, but neither were change of uses under Class Q. Therefore this would be the first larger dwellinghouse meeting criteria (b) (i) (aa) and the cumulative floor space is less than 465sqm, also meeting criteria (b) (i) (bb).

7.7 *(ba) the floor space of any dwellinghouse developed under Class Q having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order exceeds 465 square metres*

This clause clarifies that any single dwellinghouse converted under Class Q cannot exceed 465sqm. In this case, as the only proposed Class Q conversion, it would not exceed this amount.

7.8 *(c) in the case of—*

(i) a smaller dwellinghouse, within an established agricultural unit— (NB smaller dwellinghouse defined as no more than 100sqm)

(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;

As noted above the proposed conversion would amount to 182.2sqm which would not constitute a smaller dwelling and therefore clause (d) does not apply.

- 7.9 (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;

The proposed larger dwellinghouse would be the first and only dwelling under Class Q on the agricultural unit, and would be less than 465 sqm, which would comply with clause (d)(i) and(ii).

- 7.10 (e) the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;

The site is not occupied as an agricultural tenancy

- 7.11 (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;

Not relevant, no agricultural tenancy

- 7.12 (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;

In this case the "established agricultural unit" comprises the 2.25 acre of former nursery land outlined blue on the application documents. There have been no Part 6 Class A or Class B agricultural buildings erected on the agricultural unit since 2013 and therefore clause (g) is complied with.

- 7.13 (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;

The plans submitted indicate an internal conversion only with no external additions to the existing building. The conversion is therefore considered to comply with clause (h).

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

The submitted supporting statement states that this clause does not apply as the application has been submitted under Class Q(a) i.e. a change of use only without any building operations. The LPA note that the comparison of existing and proposed plans does show a degree of internal works, both some demolition of internal walls and some erection of new partitions. Arguably these works are considered likely to constitute 'building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3' i.e. the application should be considered under Class Q (b).

However the LPA also notes the submitted structural survey which indicates that all main structural elements would be retained with external cladding and corrugated roof sheeting retained. All external window and door openings would also remain unaltered. Therefore the LPA is of the opinion that, even if considered under Class Q (b), then clause (i) would be complied with, with only minor building operations occurring.

7.15 *(j) the site is on article 2(3) land;*

The site is not on Article 2(3) land

7.16 *(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;*

It is not

7.17 *(l) the site is, or contains, a scheduled monument; or*

It does not

7.18 *(m) the building is a listed building.*

It is not

7.19 Therefore, the LPA consider that the proposed development fails criteria (a) (ii), as on the balance of probability the application building was not last used for agricultural purposes, and as such would not comply with one of the specified limitations in Class Q.1. The proposed change of use to 1No dwelling is therefore not considered to benefit from permitted development rights under Class Q.1.

(ii) Prior Approval for Transport and Highways Impacts; Contamination risks; Noise Impacts, Flooding risks; whether Location makes the change of use Impractical or Undesirable; Design & External Appearance; and Natural Light for Habitable rooms

7.20 Given the conclusions above that the development fails Q 1, then it is considered un-necessary to consider whether prior approval would be required for any of the relevant issues. However it should be noted that whilst the site falls outside current day Flood Zones 2 and 3, it does fall within a Future Flood Zone, and whilst a Sequential Test is not necessary for the change of use of a building, a site specific Flood Risk Assessment would be needed and has not been submitted as part of this application. Without a FRA the application would not be able to progress.

(ii) Habitats Regulations Assessment

7.21 Similarly, in light of the conclusions above, this application has not progressed to undertaking a Habitats Regulations Assessment. To do so a Nitrogen Budget

calculator, occupancy calculator and CEMP would all need to first be submitted.

8 Conclusion

- 8.1 It is the opinion of the LPA that, based on local knowledge, third party comments and photos of the building, the building the subject of this application, outlined in red on the submitted plans, was last in use as a Class E tea room, and not last used for agricultural purposes. No evidence has been provided on the use of the building since it was admitted to have been taken out of agriculture use in October/November 2012. Therefore, insufficient evidence about the last use of the building is such that, on the balance of probability, the proposed development is considered to fail the requirements of clause (a) (ii) and would not be considered to be permitted development.
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9 RECOMMENDATION:

That the Head of Planning be authorised to for application APP/23/00324

(A) for the following reasons

- 1 The proposed change of use of the agricultural building to 1No dwellinghouse is not considered to represent permitted development under the Town and Country Planning (General Permitted Development Order) 2015 (as amended). The development is not considered to meet the following criteria and is therefore not able to be carried out under permitted development and would require formal planning permission.

Under Schedule 2, Part 3, Class Q, paragraph Q.1 the change of use does not meet the following tests:

(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;

In the absence of any submitted evidence about the last use of the application building, and on the balance of probability, it is considered that the building was last used as a tea room and cafe. As such the last use of the building is considered to be a Class E use under the Town and Country Planning (Use Classes) Regulations 2020, and not last used for agricultural purposes.

It is therefore considered that the change of use of the building to 1No dwellinghouse would not meet the requirements of Schedule 2, Part 3, Class Q, paragraph Q.1 (a) (ii) and therefore under the Town and Country Planning (General Permitted Development) (England) Order 2015 the works proposed would require formal planning permission.

