Willis & Co.

Chartered Town Planners
30 The Causeway
Chippenham
Wiltshire
SN15 3DB

Our ref.: [redacted]

30th June 2023

[redacted]

Planning Services
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Dear Sir,

Town and Country Planning Act 1990
Application for prior approval under Part 3, Class R of the Town & Country Planning (General Permitted Development) Order 2015 (Revised Proposal)
Home Farm, Burton Hill, Malmesbury, SN16 0EW

Introduction

1. We are instructed by the owner of the above property to prepare and submit this Class R prior approval application for the conversion of agricultural buildings to a flexible commercial use - in this case a Class A3 (Cafe) use. Please find attached in support of this application;
- the completed applications forms
- the farm plan, plan no. SB-JH-10
- the location plan, plan no. SB-JH-01
- the site plan, (including a parking layout) plan no. SB-JH-02A
- plans and elevations as existing, plan nos. SB-JH-03 to -05
- plans and elevations as proposed, plan nos. SB-JH-06 to 08
- the appropriate application fee of £96.

The Previous Class R Prior Approval application ref. PL/2022/02070

2. You will recall that a similar application was submitted under ref. PL/2022/02070. This application for prior approval was submitted on 7th March 2022 and refused on 5th May 2022 for the following single reason;

> *1. The information submitted in support of the application does not demonstrate that the proposal complies with Condition R.3 (1)(b)(i) of Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).*
>
> *Insufficient information has been provided in respect of the transport and highways impacts of the proposed development. In the absence of a transport statement or assessment, including details of the operations on the site and information on the amount and type of vehicular traffic associated with the*

Contd.../

Class R application (Revised Proposal) at Home Farm, Burton Hill, Malmesbury, SN16 0EW

> *proposed use, it has not been demonstrated that consideration has been given to the needs of all users, that the proposal is capable of being served by safe access to the highway or that satisfactory parking, loading and unloading facilities can be provided on the site in accordance with Core Policies 61 and 64 of the Wiltshire Core Strategy (2015) and Paragraph 110 of the National Planning Policy Framework (2021).*

3. The decision on application ref. PL/2022/02070 was communicated by email to the applicants agent, arriving at 1805 hours, after the appellants agents normal business hours. The application was validated on Thursday 10 March 2022 and thus the 56-day period for determination expired on Thursday 5 May 2022. The critical event here for the purposes of the computation of the 56-day rule is the Authority's "*notifying the applicant as to whether prior approval is given or refused*".

4. Applying the facts in *R (Coventry Gliding Club Ltd) v Harborough DC* [2020] EWHC 3388 (Admin), the Judge determined that the LPA had erred in granting prior approval. It emerged that although the LPA's decision had been taken prior to the expiry of the 56-day period, it had not been properly communicated to the applicant until after the period. The consequence was that the applicant had an unconditional right to develop.

5. Further, section 336(4A) of the Act provides that where an electronic communication is used for the purpose of serving or giving notice, and the communication is received by that person outside their normal business hours, it is taken to have been received the following working day – a day not a Saturday, Sunday, Bank Holiday or other Public Holiday. Thus the LPA's decision must not only be dispatched (post or electronically) within the 56-day period, but that it must actually be received by the applicant within that period.

6. Turning to application PL/2022/02070, receipt of the decision notice at 18:05 on Thursday 5 May 2022 (this fact is not disputed by the LPA) was outside of the applicant's planning consultant's business hours which were 09:00 to 17:30 hours, Monday to Friday (again, this fact is not disputed by the LPA). Applying the provisions of s336(4A), it follows that that communication is taken to have been received on Friday 6 May 2022. Therefore, the notification of the Decision Notice for application PL/2022/02070 was not received by our client (and/or his planning consultant) within the 56-day period. As such, it is our view that our client now benefits from an unconditional right to carry out development

Contd.../

Planning Services, Wiltshire Council 30th June 2023

Class R application (Revised Proposal) at Home Farm, Burton Hill, Malmesbury, SN16 0EW

in accordance with Class R and the details provided with application PL/2022/02070.

7. Unfortunately, the Council refuses to accept the position described above and maintains that its decision was issued within the 56-day period. This leaves the applicant 'in limbo', in a situation which can only be resolved by the submission of an application for a Certificate of Lawfulness (to confirm that the previous application PL/2022/02070 is capable of being implemented). However, as it is likely that the LPA will maintain its position, this would mean the added cost and delay of an appeal. Hence, this re-application, which can hopefully be determined within 56 days. Of course, in the event that this revised application is refused the applicant reserves the right to pursue an application for a Certificate of Lawfulness and, if necessary, an appeal.

The Revised Class R Prior Approval Application.

8. Effectively, the only outstanding issue that could not be resolved prior to the determination of application PL/2022/02070 was that the highways officer asked for additional details of parking and turning within the site. These details have been provided with this application (see plan SB-JH-02A) and below.

9. The applicant farms at Whiteheath Farm, Corston. The established agricultural unit extends to some 90 hectares (220 acres), on the west side of the A429 road between Corston and the southern edge of Burton Hill, Malmesbury. The application site comprises land and buildings at Home Farm a satellite to the main farmstead at Whiteheath Farm. The site is located on the northern edge of the applicants established farming enterprise.

10. Under the provisions of Class R, certain criteria must be met;
- The subject building needs to have been solely in agricultural use on the 3rd July 2012. The buildings has been in agricultural use since this date and at all material times to the present day.
- The total cumulative floor area of the existing building(s) – within the planning unit – which have changed under Class R rights, must not exceed 500m². The combined floor areas of the buildings included in this application is 446 square metres. No other buildings on the planning unit have been changed under Class R.
The building is not; a listed building (or within the curtilage of a listed building); a scheduled monument (or part thereof); form part of a (or be

Contd.../

located within) a safety hazard area; form part of an explosives storage are;
- For the avoidance of doubt, there is no requirement in the Order for the building to be redundant for agricultural purposes.

Demolition of a building - not part of this present application

11. It will be noted that one building on the site, a concrete portal-framed hay barn on the south side of the main building, is to be demolished. We do not seek consent within this Class R application to demolish this building. This building lies outside of the application site. This is because whilst the demolition of a building can constitute development, 'permitted development' rights for the demolition of building are set out elsewhere in the Order.

12. In simple terms, there is no need for Schedule 2, Part 3, Class R of the Order to be concerned with approval for the demolition of a building, because the 'permitted development' rights for the demolition of a building are set out elsewhere in the GPDO. When the LPA gives prior approval for the conversion of the agricultural building under Schedule 2, Part 3, the demolition of the adjacent agricultural building automatically becomes 'excluded development' and the demolition is 'permitted development' by virtue of Schedule 2, Part 31.

13. Even if we are wrong on this point and the demolition of the adjacent building is not covered by Schedule 2, Part 31, it is no justification for withholding or delaying the prior approval for the conversion of the adjacent building under the provisions of Class R. However, in order to deal with this matter, we are today submitting a concurrent application for prior approval under Schedule 2, Part 11, Class B of the GPDO, which provides a suitable mechanism for the local planning authority to decide if prior approval is required for the demolition of this building and, if it believes that prior approval is required, to grant the prior approval for the demolition of this building.

Operational development

14. It is noted that Class R only deals with the use of the building; it does not make provision for any alterations to the building which may need planning permission from the Council. By and large, the existing buildings are already enclosed and capable of conversion to retail/ cafe/ancillary storage uses without requiring alterations which would need planning permission from the Council.

Contd.../

Planning Services, Wiltshire Council 30th June 2023

Class R application (Revised Proposal) at Home Farm, Burton Hill, Malmesbury, SN16 0EW

15. Turning to the traditional stone buildings, these are generally sound and capable of being retained for storage purposes with minimal alterations. It will be noted that alterations inside the buildings and external alterations which do not materially affect the appearance of the building do not constitute development within the meaning of S55(2) of the Planning Act. No floor plans or elevations of the traditional buildings are submitted; these are not necessary for a Class R application and no material changes to these buildings are proposed.

16. All of the roofs are to be stripped and re-roofed. It is likely that the fibre-cement sheets on the concrete portal framed building will be replaced with new fibre cement or steel profiled steel sheets. It is likely that the fibre-cement sheets on the elevations of the main building will also be replaced with cladding to match the roof. Re-roofing/recladding the buildings is not development which requires planning permission from the Council.

17. On the south elevation of the larger building, where the smaller portal-framed building is to be removed, glazed screens will be inserted as indicated on the plans. It is not considered that the glazed screens represent a significant alteration to the appearance of the building and they do not, therefore, require prior approval or planning permission from the Council. Finally, it is likely that a new stockproof post and rail fence will be erected along the southern boundary of the site. Again, this is something that will be 'permitted development'.

Relevant considerations in respect of Class R prior approval

18. Where the existing floor area to be changed exceeds 150 m² but does not exceed 500 m², as in this case, the developer must submit a 56 day notice to the Planning Authority for prior approval. There are just four issues to be considered. No other issues may be taken info account.

1. Transport and highways impacts of the development.
2. Noise impacts of the development.
3. Contamination risks on the site
4. Flood risks

Transport and Highways Impacts

19. The buildings presently have the benefit of two points of access; an access to the rear of the site off a lane which serves neighbouring dwellings and further agricultural land and a pair of existing gates onto

Contd.../

the A429 road. The previous (2017 and 2018) Prior Approval applications were based on access being achieved from the land to the north of the application site. This arrangement was found to be unacceptable to the Highways Officer. The most recent Class Q application (ref. 20/06771/PNCOU) included access to the site direct from the A429. This application was supported by a Transport Statement with the results of a speed survey which showed that there was sufficient visibility at the point of access given the speed of vehicles on this part of the road.

20. There is an existing yard around the buildings. Part of this yard is included with the red-lined application site, but part is not. This yard is already in use in connection with the agricultural buildings for the purposes of parking and turning vehicles. There is no requirement within Class R to include the existing access and yard within the application. It will be noted that the 'red line' is drawn closely around the buildings and any curtilage does not exceed the area occupied by the buildings included in this application.

21. So far as highway safety is concerned, the main issue relates to visibility at the access. The existing gates are wide enough for two private cars to pass at the gates. The gates will be fixed open during opening hours so that vehicles do not have to stand on the highway. The second point is the accommodation of vehicles within the site. There are three issues to consider here; service vehicles; customer vehicles; and staff vehicles.

22. Staff vehicles. It is expected that the enterprise will employ no more than 6-8 members of staff at peak time. Customer service workers are likely to be young and live locally and will walk or cycle to work, or be dropped off and picked up by a family member. It is likely, therefore, that there will be no more than 4 staff vehicles parked at the site at peak times. Staff car and cycle parking will be provided in the area to the south of the building.

23. Service vehicles. Most deliveries would be my light commercial vehicle (i.e. Mercedes Sprinter) or small fixed truck (up to 7.5 tonnes). All deliveries, particularly by larger vehicles, would be managed so that they are made outside the times when the shop/cafe is open to the public. Provided suppliers with larger vehicles visit the site outside opening hours when the yard/car park is empty, they will be able to turn within the site without any difficulty. The whole of the yard at the front of the building will be remain available for turning vehicles during opening hours.

Contd.../

Planning Services, Wiltshire Council 30th June 2023

Class R application (Revised Proposal) at Home Farm, Burton Hill, Malmesbury, SN16 0EW

24. Customer Vehicles. The Class A1/A3 floorspace will be limited to the two eastern bays of the larger portal-framed building within the site. The rear part of the main building and the smaller traditional buildings will be retained for ancillary storage use. In accordance with Wiltshire Councils approved parking standards, square metres of retail use will require 1 parking space/14 square metres (60 gross floor area) and the cafe portion of the building (60 square metres) requires 1 space per 5 square metres of public floor area. We therefore calculate are requirement for 16 parking spaces, which can easily be accommodated within the existing yard area, as shown on the plan submitted herewith. In addition, covered cycle parking will be provided for 15 cycles in the first open bay of the building, as indicated on the site plan.

25. I would point out that the applicant has the benefit of a prior notification under the provisions of Class R to change the use of 138 square metres of the building (approximately 50% of the floor area of the main building) without the requirement for 'prior approval'. There would be no possibility of the Council objecting to the use of up to 138 square metres/50% of this building for flexible commercial uses and this is considered to be a material consideration in this case.

26. Bearing in mind that these buildings are already in agricultural use and have an existing access onto the A429 with adequate visibility (see the Transport Statement submitted with application 20/06771/PNCOU), we are satisfied that the proposed access and parking arrangements are satisfactory. We are satisfied that the proposed development will not have any significant transport or highways impact, particularly having regard to the advice contained in paragraph 111 of the NPPF, that development should only be refused on highways grounds where the cumulative impacts on the road network would be severe; it is plain that this is not the case here.

Noise impacts of the development.

27. The application site is presently in agricultural use where there will be noise generated both day and night. The site is also alongside the A429 where there is a moderate level of traffic noise at most times. It is not considered that retail/cafe use within the building will be likely to generate an unacceptable level of noise. Whilst there are houses close by, the existing traditional farm buildings (which will be retained for storage use) will provide an effective barrier. In addition, it is not intended that the premises will operate outside the hours of 8am in the morning and 6pm in the evening (except for deliveries and servicing, as discussed above).

Contd.../

Planning Services, Wiltshire Council 30th June 2023

Class R application (Revised Proposal) at Home Farm, Burton Hill, Malmesbury, SN16 0EW

Contamination.

28. The building have previously been used for agricultural storage and to accommodate cattle. local planning authority have previously accepted that contamination is unlikely to be an issue in connection with the residential use of the premises.

Flood risk.

29. The local planning authority has previously accepted that the application site is in Flood Zone 1 and is unlikely to be adversely affected by flooding.

Conclusions

30. In conclusion, we consider that the proposed development meets the qualifications for Class R development set out in the General Permitted Development Order. It is noted that the previous, similar application was considered to be acceptable to the Council, subject to the submission of a parking layout. This parking layout has now been provided in support of this application.

31. We remain firmly of the view that the decision in respect of the earlier Class R prior approval application ref. PL/2022/02070 was communicated to the appellants agent after the 56 day deadline. No extension of time was agreed and thus we consider that the applicant has the benefit of consent under the relevant provisions of the GPDO 2015. We regard this as a legitimate fallback position to be taken into account.

32. The development is satisfactory in terms of highways impacts, noise impacts, contamination and flood risk. There are no reasonable grounds to refuse this application for prior approval. The matter of the demolition of the adjacent hay barn is the subject of a separate application for prior approval, submitted herewith. I trust this is clear and look forward to hearing from you shortly.

Yours faithfully,

[redacted]

Marc D. Willis BTP MRTPI FBIAC