CASE OFFICER'S REPORT

Application Reference:	PL/2023/10282
Application Type:	Prior approval Part 3 Class R: Agricultural buildings to a flexible commercial use
Site Inspection:	
Consultation ends:	28 December 2023
Case officer:	Jane Sanger

Site Address:	LOWER FARM, DEVIZES ROAD, ROWDE, DEVIZES, SN10 2LX
Proposal:	Prior approval Part 3 Class R: Agricultural building to a flexible commercial use
Recommendation:	Prior Approval Not Required

POLICIES

Class R of Schedule 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") As Amended

The Town and Country (General Permitted Development) Order 1995 ("the General Permitted Development Order").

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

NPPF 2023 and PPG

Strategic Flood Risk Assessment

CONSULTATION RESPONSES

Bromham Parish Council – no objections.
Highways Officer – no objections, subject to securing car parking.
Public Protection Officer – no comments or objections.

ASSESSMENT

The application site relates to Lower Farm, Devizes Road, Rowde. The site relates to the northern part of the wider Lower Farm complex, which comprises agricultural uses and commercial, including the retail unit of the Rowdey Cow café and ice cream parlour. The building in question is positioned in between two former agricultural buildings, the one adjoining it to the north has been the subject of a Permission to a change of use to two flexible use commercial units (Unit 1 – Class B8 and Class E(g) only and Unit 2 – Class B8 and Class E only) and the L-shaped barn to the south side, is being used for the storage of lorries, as seen at the site visit, but retains its agricultural appearance. The area hatched in green on the submitted Block Plan, to the west of

the building forming the application site is a concrete hardstanding and forms the curtilage of the site.

The building is constructed from a steel portal frame, with a blockwork plinth, with corrugated metal cladding and Yorkshire boarding above to the western gable end and timber and concrete panels to the eastern gable end, under a corrugated, pitched sheet roof.

The site is identified as being within Flood Zone 1 and falls outside of any other formal planning designation.

The proposals:

The proposal relates to 367.86 sq. m of floor space which is proposed to be changed from agriculture to a mixed commercial use under Schedule 2, Part 3, Class R.3 of the GPDO which allows for up to 500 sq. m to be changed from agriculture to a flexible commercial use without the requirement for planning permission.

The application is a notification for Prior Approval under Class R of the General Permitted Development Order for the change of use of an agricultural building to a flexible commercial use. The red line is drawn tightly around the relevant building and the block plan includes a defined curtilage hatched in green and shown above. The curtilage extends to 234.75 sqm. No additional land is included within the proposed change of use. The existing access to the farmyard is from the main road and the building would benefit from this existing means of access via the farmyard which is all within the applicant's ownership.

Works to provide or improve any access, parking and turning areas would normally form part of a planning application once the principle for change of use is permitted under the provisions of Class R.

However, an additional drawing has been submitted showing 11 car parking spaces, including some EV charging points. This is just under the required 12 spaces, based on the ratio of 1 parking space to 30sqm. This is considered to be satisfactory from a highways perspective, given that this is a large site and there is overflow car parking elsewhere within the site.

Class R permits a flexible commercial use and the applicant is seeking all the uses under this Class, as this provides future tenants with flexibility. Uses allowed under Class R include those defined by Class E of Schedule 2:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes-

(a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,

(b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,
(c) for the provision of the following kinds of services principally to visiting members of the public—
(i)financial services,
(ii) professional services (other than health or medical services), or
(iii) any other services which it is appropriate to provide in a commercial, business or service locality,

(d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public
(e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,
(f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,
(g) for—

(i) an office to carry out any operational or administrative functions,
(ii) the research and development of products or processes, or
(iii) any industrial process,

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Condition of the buildings, operational development and Class R

The existing building consists of a single storey, pitched roof building, constructed from a steel portal frame, clad in Yorkshire boarding, corrugated sheets; timber and concrete panel cladding. The applicant describes the building as:

“The building is single story, steel portal frame construction, with concrete floor and block work and cladded walls. This farmyard was once used for dairy cattle, but no livestock are kept on site. The current building is used for general agricultural machinery and fodder storage”.

The proposal is a change of use for the building from agriculture to a flexible commercial use in accordance with Class R of The Town and Country Planning (General Permitted Development)(England) Order 2015.

The extent of the building is shown edged red on the attached plan and the curtilage is shown hatched green.
The building appears to be in reasonable physical condition. The agent states:

“The steel portal frame, elevations and roof are sound and will remain insitu and continue to provide the loadbearing elements. There are no external works proposed”.

However, the condition of the walls, floor and doors of the building and other structural matters are not considerations for Class R applications which do not allow for any associated operational development. Various appeal Inspectors have opined on this matter, given the levels of

operational development usually required to bring buildings up to the required standard for commercial occupancy APP/F1610/W/17/3188502 provides an explanation which can be applied to the determination of this application:

"Class R does not allow for any associated operational development to take place as part of the permitted development right. However, it is clear that it is envisaged that building works or other operations may be reasonably necessary to use the building or land for the use proposed under Class R. Where necessary, a separate planning application will be required following either the confirmation that prior approval is not required or the grant of it. The application , which is the subject of this appeal, seeks to do just that and it includes works to the building and the creation of a parking and turning area. The existing access would be utilised".

The term “associated operational development” is defined within Class R under R.3(4) which states:

(4) For the purposes of sub-paragraph (3), “associated operational development” means building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.

Appeal Inspectors have considered the extent of operational development that may be reasonable and whether works go beyond what could reasonably be considered to constitute the conversion of the building (please note that this line of argument is enabled by the wording of Class Q for residential conversions). When considering extensive works for the above appeal building, the Inspector concluded that the works were…

"...expressly for the building works that relate to implementing the change of use. The works proposed are extensive and would result in new external walls on all four elevations and a new external roof. However, given the nature of the existing building, I cannot envisage that works which were significantly more modest than what is proposed would be sufficient to allow the building and land to be used for its intended purpose. The works would not exceed what is reasonably necessary. The concept of conversion is not embedded in class R and there is no specific advice in the PPG as to what, if any, limits there should be on the extent of any associated operational development in a subsequent planning application".

Therefore, provided the works required do not create superfluous features, extra floorspace or extensions to the buildings, the LPA cannot reasonably object on the grounds that operational works may be required to convert this building. However, planning permission will be required for such works.

MAIN PLANNING ISSUES

Part W (Procedure for applications for prior approval under Part 3) states: (10) The local planning authority must, when determining an application—
(b) have regard to the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government in February 201963, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.

The subject matter is:
• transport and highways impacts of the development;
• noise impacts of the development;
• contamination risks on the site; and
• flooding risks on the site the main issues are therefore:
• Whether the proposed change of use constitutes Permitted Development under Class R
• Whether the Prior Approval of the Local Planning Authority is required

RELEVANT POLICY

Permitted development rights allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations set out in the legislation. In some cases, the permitted development right will require the local planning authority to approve certain matters (a process generally referred to as “prior approval”). This is an application for prior approval.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (“the Order”) amends the Town and Country (General Permitted Development) Order 1995 (“the General Permitted Development Order”) to allow new permitted development rights for changes of use. Class R of Part 3 of Schedule 2 to the General Permitted Development Order permits:

Permitted development

(ii) Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling within one of the following provisions of the Use Classes Order—
(a)Class B8 (storage or distribution) of Schedule 1; (b)Class C1 (hotels) of Schedule 1; or
(c)Class E (commercial, business or service) of Schedule 2.

Development not permitted

• Development is not permitted by Class R if—

(a) the building was not used solely for an agricultural use as part of an established agricultural unit— (i)on 3rd July 2012;
(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 building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins;
(b) the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 500 square metres;
(c) the site is, or forms part of, a military explosives storage area; (d)the site is, or forms part of, a safety hazard area; or
(e)the building is a listed building or a scheduled monument.

Conditions

• Development is permitted by Class R subject to the following conditions—

(a) a site which has changed use under Class R may, subject to paragraph R.3, subsequently change use to another use falling within one of the use classes comprising the flexible use;
(b) for the purposes of the Use Classes Order and this Order, after a site has changed use under Class R the site is to be treated as having a sui generis use;
(c) after a site has changed use under Class R, the planning permissions granted by Class E of Part 7 of this Schedule apply to the building, subject to the following modifications—
(i) “curtilage” has the meaning given in paragraph X (interpretation) of this Part;

(ii) any reference to “office building” is to be read as a reference to the building which has changed use under Class R.

R.3—(1) Before changing the use of the site under Class R, and before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, the developer must—
(a) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit does not exceed 150 square metres, provide the following information to the local planning authority—

(i)the date the site will begin to be used for any of the flexible uses; (ii)the nature of the use or uses; and
(iii)a plan indicating the site and which buildings have changed use;

(b) where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—
(i)transport and highways impacts of the development; (ii)noise impacts of the development; (iii)contamination risks on the site; and
(iv) flooding risks on the site,

and the provisions of paragraph W (prior approval) apply in relation to that application.

(2) Subject to sub-paragraph (3), development under Class R of the type described in paragraph R.3(1)(b) must begin within a period of 3 years starting with the prior approval date.
(3) Where, in relation to a particular development under Class R of the type described in paragraph R.3(1)(b), planning permission is granted on an application in respect of associated operational development before the end of the period referred to in sub-paragraph (2), then development under Class R must begin within the period of 3 years starting with the date that planning permission is granted.
(4) For the purposes of sub-paragraph (3), “associated operational development” means building or other operations in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.

Interpretation of Class R

R.4 For the purposes of Class R, “flexible use” means use of any building or land for a use falling within the list of uses set out in Class R and change of use (in accordance with Class R) between any use in that list.

Under provision R.4, a change of use is permitted within the class. It is “flexible.”

The provisions of paragraph W of Part 3 of The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (as amended by Class R) set out the procedure for applying for approval and this includes that the Local Planning Authority must have regard to the National Planning Policy Framework 2021 so far as relevant to the subject matter of the prior approval. The conditions section above would then apply.

ASSESSMENT OF THE PROPOSAL

Class R – agricultural buildings to a flexible commercial use
Permitted development
R. Development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use…….

R.3-4 also provides:

(4) For the purposes of sub-paragraph (3), "associated operational development" means building or other operation in relation to the same building or land which are reasonably necessary to use the building or land for the use proposed under Class R.

Class R of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a flexible use falling Class B1 (business) use class. Any associated operational development defined in R.3-4 above must be the subject of a subsequent S78 application for planning permission.

The LPA has no details of any future changes required to the building envelope. This provision does not enable the LPA to consider the merits or otherwise of the building’s structural suitability for conversion. Therefore, as the provision allows a change of use and no superfluous physical alterations are proposed in this instance, the LPA has no grounds to object in principle. The proposed use falls within the permitted use categories under Class R.

The PPG has clarified that the sustainability of a site’s location is not a test that applies to this permitted development right. Therefore, concerns around the location and sustainability of the site, ecological impacts and any associated NPPF paragraphs related to these topics are not material considerations for this application.

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

• the building was not used solely for an agricultural use as part of an established agricultural unit—
(iii) on 3rd July 2012;
(iv) 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
(v) in the case of a building which was brought into use after 3rd July 2012, for a period of at least 10 years before the date development under Class R begins;

The building is stated by the applicant to have been in agricultural use on 3rd July 2012. The LPA has no evidence to the contrary to this assertion by the applicant. The approved application E/11/0051/FUL - Conversion and extension of traditional farm building for ice cream manufacturing, cafe and farm shop. Construction of outdoor seating area, children's play area, animal enclosure and parking area. Alterations to existing access and driveway, approved with conditions on 07.03.2011, elsewhere on the site is noted.

• the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 500 square metres;

The cumulative floor space of buildings as described does not exceed 500 square metres The total GIA for the change of use is stated to be 367.86 sq. m.

• the site is, or forms part of, a military explosives storage area;

The site is not, and does not form part of, a military explosives storage area
• the site is, or forms part of, a safety hazard area; or

The site is not, and does not form part of, a safety hazard area

• the building is a listed building or a scheduled monument

The building is not a listed (or curtilage listed) building or a scheduled monument.

R.3—(1) Before changing the use of the site under Class R, and before any subsequent change of use to another use falling within one of the use classes comprising the flexible use, the developer must—
(b)where the cumulative floor space of the building or buildings which have changed use under Class R within an established agricultural unit exceeds 150 square metres, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(d) transport and highways impacts of the development;

The Planning Statement explains that there is direct access to the public highway from the site.

The Highways officer has raised no objection:

I would like to take the same approach as we took on the first application. Subject to allocated parking I am minded to accept the use of the site and access in relation to a commercial use.

(e) noise impacts of the development;

The Public Protection Officer has considered the development and has no comments or objections to raise.

(f) contamination risks on the site; and

(g) flooding risks on the site,

The site is within Flood Zone 1. The Flood Risk Assessment shows that the building is not at risk of groundwater or surface water flooding. There may be some small risk to the external curtilage area from surface water flooding, but the curtilage would not be subject to any physical changes or operational development approved by Class R. Changes of use are exempt from the sequential test under the NPPF footnote 56 and a site specific flood risk assessment is not considered to be necessary for the very small area of curtilage that may be affected by surface water, as this is shown on the additional plans to be for car parking.

and the provisions of paragraph W (prior approval) apply in relation to that application.

This is noted and the provisions are considered to have been met.
Curtilage and Part X

The curtilage and established agricultural unit are defined by Part X of the GPDO and states:

Appeal cases have recently shown that Inspectors do not expect the red line to enclose the means of access to buildings if this can be reasonably achieved.

There is an existing vehicle access to the farmyard where the building is sited. This is shown to be within the red line on the additional Site Plan submitted.

The submitted plan shows the curtilage for the building as a green hatch. The application is considered to satisfy part X as the application includes a curtilage defined as the area of land immediately beside or around the agricultural building no larger than the land occupied by the agricultural building and this is the lesser of the two possible options available.

CONCLUSION

It is considered that the proposed development would comply with all the criteria set out in Class R of the GPDO as amended and the proposed change of use from agriculture to a flexible commercial use benefits from permitted development rights under Class R.

The application meets the provisions of paragraph W (prior approval) which apply in relation to this application. Paragraph X relates to the permissible curtilage and following assessment, this is considered to be acceptable and the development can be achieved within the limitations set out in the legislation. Any associated operation development will need to submitted in the form of a s78 application - this may include things such as the EV parking bays, door, windows etc.

RECOMMENDATION: PRIOR APPROVAL NOT REQUIRED

The Local Planning Authority has determined that its **prior approval is not required** in respect of the noise impacts of the development; contamination risks on the site; transport and highways matters; and flood risk.