CASE OFFICER'S REPORT

Application Reference:	PL/2023/10426
Application Type:	Prior approval Part 3 Class R: Agricultural buildings to a flexible commercial use
Site Inspection:	
Consultation ends:	08 January 2024
Case officer:	Callan Powers

Site Address:	HOME FARM, BURTON HILL, MALMESBURY, SN16 0EW
Proposal:	Retail/Cafe with ancillary Storage (Re-submission of application PL/2023/05640).
Recommendation:	Prior Approval Refused

Application Reference: PL/2023/10426
Site notice erected: 22/12/2023

Schedule 2, Part 3, Class R, Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

KEY ISSUES
Whether the proposed development complies with the conditions, limitations or restrictions specified in the Order
Transport and Highways impacts
Noise impacts
Contamination risks
Flooding risks

REPRESENTATIONS
Public representations – Two representations have been received, both in objection to the development. Issues raised include the following:
- Flood risk, including raising the risk of flooding on adjacent properties;
- Highway safety; and
- Noise.

St Paul Malmesbury Without Parish Council - Objection, as follows:

"At its meeting on the 12th December the parish council resolved to continue to object to this application. The council is again content to leave the evaluation of whether the new application does indeed comply with the necessary conditions of a Part 3, Class R classification to more technically qualified WC staff. The council continued to express concerns about the sketchy nature of the application which provided little or no information about how the site will be operated, the hours of operation, or the types of vehicles using the facilities. The council supported the concerns expressed by the Highways officer about the sustainable nature of the proposal by adding vehicle trips and trip attraction to a site that previously had no vehicle attraction. Although applications can only be determined on their content the council is deeply

concerned that this proposal is simply a forerunner for future inappropriate impactful development."

Public Protection – No objection, subject to conditions.

Highways – No objection, subject to conditions.

SITE DESCRIPTION
The application site relates to Home Farm, Corston. It comprises land and buildings within an established agricultural holding extending over 220 acres. The site is to the west of the A429 with 2 points of access both gained from the main road.

The agricultural buildings currently under consideration are located on the southeastern part of the site with satellite structures and residential units clustered along the northern part. The wider views are of fields and open countryside. A structure to the south of the site which has formed part of various historic application on site is to be demolished and two agricultural units used for ancillary storage have been identified as part of this current application. The overall dimensions of all of the buildings have not been given, but it is stated in the covering letter that the application relates to 446 sq. m of floor space.

The site is unconstrained by landscape or ecological designation. The nearest designated heritage asset is the grade II listed Pike House, which sits at the roadside 30 metres north. A public right of way, Bridleway MALW91, approaches the rear of the site from the south east. The site is within Flood Zone 1, wherein there is not known to be a heightened risk of flooding from fluvial sources.

Relevant planning history
Relevant to this application are recent refusals of prior approval, first under the following application:

PL/2022/02070: Agricultural buildings to a flexible commercial use (Retail / Cafe with ancillary Storage). Prior approval refused 05 May 2022

Prior Approval was refused on the basis that insufficient information had been provided in order to grant prior approval in respect of highways matters. The decision made in this regard was issued outside of the 56 days allotted for this type of application and with no extension of time agreed, and the applicants have therefore claimed a right to proceed according to Paragraph W(11)(c) of Part 3 of the Order. Nevertheless, the development shown in previous applications at this site is not permitted under Class R, and regardless of the Prior Approval process there is no lawful basis on which to proceed with development.

Second, the following application:

PL/2023/05640: Retail/Café with ancillary storage (re-submission of application PL/2022/02070)

The above application contained operational development that could not be considered in a Class R application. The development was outside of permitted development under this class and the application was duly refused.

Other planning history is as follows:

17/12546/PNCOU Notification for Prior Approval Under Class Q - Conversion of Agricultural Buildings to form 3 Dwellings and for Associated Operational Development. Prior approval refused 7th February 2018.

18/06302/PNCOU Notification for Prior Approval under Class Q - Change of Use of Agricultural Buildings to Form Three Dwellinghouses (Use Class C3) and for Associated Operational Development. Prior notification refused 24th August 2018.

20/02375/CLE Certificate of Lawfulness for the Existing Occupation of Dwelling Without Compliance with Agricultural Occupancy Condition. Certificate of lawful existing use approved 30th June 2020.

20/06771/PNCOU Notification for Prior Approval Under Class Q - Conversion of Agricultural Building to form 2 Dwellings and for Associated Operational Development. Prior notification refused 14th September 2020.

THE PROPOSAL

This application seeks a determination as to whether the prior approval of the local planning authority will be required for the change of use of the buildings in question to a commercial use (Class E under the Use Classes Order), specifically to be used for a retail/café unit with ancillary storage. The larger of the buildings is to be converted to the specified use, with the remaining two buildings to be storage ancillary to that use. As well as the change of use, the proposal includes the installation of blockwork and glaze in the south elevation of the main building, along with a modest alteration to the roof at both ridge and eaves levels. A secondary building is to be demolished.

Access is to be taken via an existing access from the A429 at which a five-bar gate is currently positioned within a stonework wall. Emergency access is also to be available at the rear of the site, to the north west. 16 parking spaces are also proposed, alongside the provision of cycle parking.

ASSESSMENT

Class R of the Order (as amended) allows for the change of use of an agricultural building and land in its curtilage (as defined below) to a 'flexible commercial use', that is, to a use falling *"within one of…"* Use Classes B8 (storage and distribution), C1 (hotels) or Class E (commercial, business or service). Such a change of use is permitted development subject to restrictions, limitations and conditions. One such condition requires the Applicant to submit an application to local planning authority to determine whether Prior Approval 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.

Paragraph W of Part 3 sets out the process by which such an application will be determined. As well as considering the above matters, the local planning authority may also refuse an application where it does not comply, or where insufficient information has been provided to determine whether the development complies, with the identified conditions, limitations and restrictions. If prior approval is to be granted, this may be either unconditional or subject to conditions reasonably related to the subject matter of the prior approval. In any event, approval (or indeed a determination that prior approval is not required), will remain conditional upon those conditions set out in the Order.

Referred to within the Order as a flexible use, once a building enters one of the specified uses under this Class it will be held to fall into a *sui generis* use for the purposes of the Use Classes Order. In practice this means that building may then change use between the Use Classes without the need for express planning permission, however there will remain a requirement for a further application to determine whether the local planning authority's Prior Approval would be required for any subsequent change between the respective Class R flexible uses.

Curtilage, for the purposes of Class R, is specified as having the following meaning:

"(a) 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
(b) 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"

Eligibility for consideration under Class R
This Class of the Order allows for the change of use but does not permit any operational development. The proposal includes physical changes to the existing buildings and would appear to involve demolition, which are not permitted under this Class.

The applicant's supporting statement advises that the assessment of the previous application was erroneous in its understanding that there was a claim that the operational works to be undertaken would be permitted development. Rather, it is claimed, these works are not to be considered development at all. These are, however, operational works to the exterior of a building that will clearly affect its external appearance. In any event, a separate application has been submitted seeking to separate these elements from the application for Prior Approval. This is consistent with Paragraph R3.(3), which envisages that associated operational development may come forward in a parallel application for planning permission to cover that development. Nevertheless, the drawings submitted with this application continue to include the operational works to the elevation of the main building. It is concluded that these elements are not permitted development.

The proposed development also proposes that a large area to the front of the building would form parking for the development. This area is greater than the footprint of the buildings to change use, and indeed larger than the 500 square metres to which the floorspace footprint is limited. This would therefore go beyond the amount of land permitted to change use under Class R, and this is not permitted development.

Given that the development proposed goes beyond what is permitted under this Class of the Order, the prior approval of the local planning authority will need to be refused. Notwithstanding this finding, the remainder of the relevant considerations are also considered in this report.

Whether the proposed development complies with the conditions, limitations or restrictions specified in the Order

Development is not permitted under this Class where:

"(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;"

The building in question is agricultural in nature and is understood to have last been in agricultural use.

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

No development is known to have taken place under Class R on the agricultural unit. Although the amount of surrounding land proposed to change use goes beyond this, the proposed floor space of buildings is stated as being 446 square metres therefore the proposal does not fall foul of this criterion.

"(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."

The proposal does not affect any of these assets or designations.

Aside from including operational development, the application does not fall foul of any of the limitations or restrictions set out in the Order.

PRIOR APPROVAL MATTERS

Notwithstanding the finding in respect of the ineligibility of this development under this Class of the Order, the following is a consideration of the prior approval matters in this application.

Transport and Highways impacts

The first application under Class R resulted in an indication that prior approval would be required in respect of the highways impacts of the development. Additional information has since been provided, including details of deliveries and parking, along with swept path analysis as well as provision for cycle parking. The swept path analysis adequately demonstrates that parking and turning can be suitably achieved at the site.

Subject to conditions including ensuring the surfacing of the access, the Council's Highways Engineer has indicated that there would be no objection to this development. The amount of parking proposed would adequately meet the needs of this form of development. Notwithstanding the fact that the amount of curtilage exceeds the definition set out in Paragraph W that helps to enable this finding, the transport and highways impacts would not represent a reason to withhold prior approval in this case.

Noise impacts
Although in a countryside location, there are dwellings within the vicinity of the site. Accordingly, it is appropriate to consider the noise impacts of the development, and prior approval will be required in respect of this matter. Nevertheless, the Council's Public Protection Officer indicates no objection to this application subject to securing noise information prior to commencement of development. Subject to such a condition, therefore, the Council has no basis on which to withhold prior approval in terms of noise.

Contamination risks on the site
The Council's Public Protection Officer has reflected on the nature of the historic use of the site and the existing development, finding that there is reasonable potential that land contamination is present. Prior approval is therefore required in respect of this aspect. Nevertheless, it is indicated that securing the necessary risk mitigation measures can be achieved with pre-commencement conditions. Accordingly, this would not be a reason to refuse prior approval.

Flooding risks on the site
As the site is not at a heightened risk of flooding, and the form of development is not one of high vulnerability to flooding, prior approval is not required in respect of flooding risks.

Conclusions
The proposed development goes beyond the scope of what is permitted under Part 3, Class R of the Schedule to the Order, as it involves operational development. Prior approval would be required in respect of noise, contamination risks and highways matters. Whilst prior approval may have otherwise been granted, the Council cannot approve development outside of that permitted under Class R. Accordingly the application will need to be refused.

RECOMMENDATION:
That the application be refused, for the following reason(s).

Refusal Reason(s): (1)

1 The application is made under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This allows for the change of use of a building but does not provide permitted development rights for any operational development. Based on the information provided, the proposal includes

operational development and is accordingly not permitted under this Class of the Order. The local planning authority has no basis on which to approve development outside of that for which prior approval is sought and prior approval must therefore be refused.