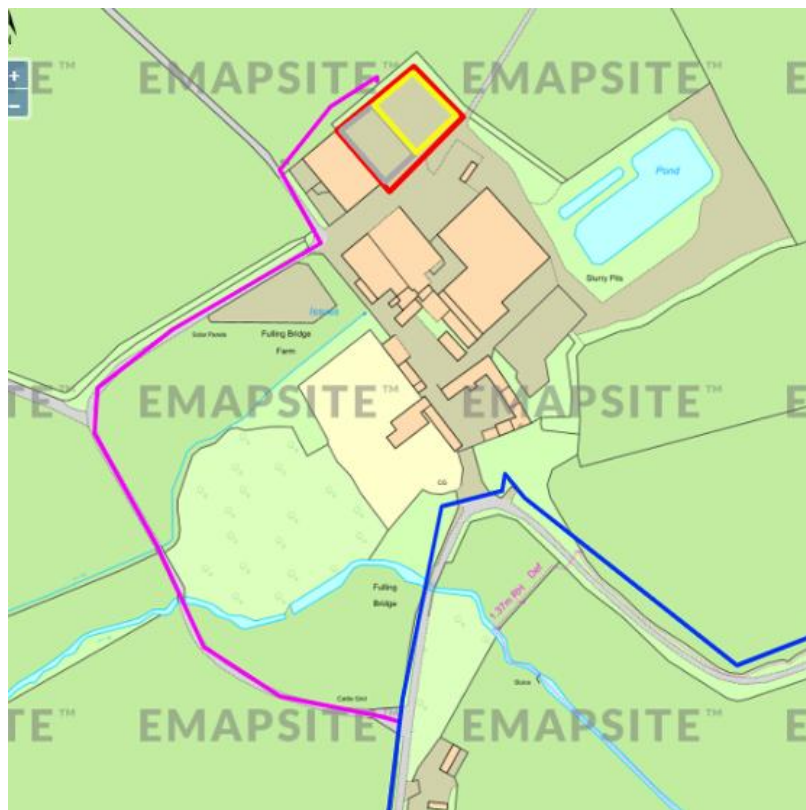


APPLICATION FOR PRIOR NOTIFICATION – PART 3 CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2025/09833
APPLICATION TYPE:	Prior approval Part 3 Class R: Agricultural buildings to a flexible commercial use
SITE ADDRESS:	FULLINGBRIDGE FARM, 41 PARK LANE, HEYWOOD, WESTBURY, BA13 4NB
DEVELOPMENT DESCRIPTION:	Prior approval Part 3 Class R: Agricultural buildings to a flexible commercial use - Agricultural buildings to Class E gymnasium (see additional document for further details)
RECOMMENDATION:	That Planning Permission is required and therefore that prior approval is REFUSED

SITE DESCRIPTION/CONTEXT

The application site is located at Fullingbridge Farm, located in the open countryside sited to the north-east of the settlement of Westbury. Various buildings are located at Fullingbridge Farm, including agricultural buildings and Fullingbridge Farmhouse - a Grade II listed residential dwelling. There is also previous consent for change of use of former traditional agricultural building to offices and subsequently to a holiday let. The application site is shown in the location plan extract below. The red line denotes the site, within which the grey rectangular land parcel denotes an “existing outbuilding” and the yellow line denotes its “curtilage”. The purple line denotes the means of vehicular access, including a new access link to the north-west of the site.



Location Plan

The application site comprises an area of land which is gravelled and appears to form part of the yard to the adjacent general purpose agricultural building. A steel frame has been erected and is attached in part to the existing general purpose agricultural building and erected over the land which is described as the existing building for the purposes of this application. The photograph below shows the extent of the steel frame, and as shown, there is no floor, roof or walls.



Photograph of subject “building”

The current use of the “building” is stated to be storage. In the absence of a roof, this would appear to be the use of land rather than the use of a building.

Vehicular access to the site is from Park Lane via an existing vehicular access and private drive.

The following constraints apply to the site:

Flood Zone 1

Not indicated as at risk of flooding from other sources (note the existing access is shown to be at risk of surface water flooding)

Grade 4 Agricultural Land Classification

Bath and Bradford on Avon Bat SAC

Trowbridge and Westbury Bat Mitigation Strategy Yellow Zone (Medium Risk for habitat loss)

PROPOSAL

The proposal seeks a change of use under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 to a flexible commercial use within Class E (commercial, business or service) of Schedule 2, Part A.

The proposed class E use specified is that of a gymnasium for commercial use.

The supporting statement indicates that the gymnasium would provide coaching for gymnastics and trampolining for an existing business wishing to relocate from existing premises within the Westbury area.

It is evident from the current extent of the building that significant operational development would be required to facilitate a change of use. A new access on agricultural land is also shown. Such operational development is excluded from the provisions of Class R and would require full planning permission. This does not necessarily preclude the principle of the change of use being granted under Class R with a subsequent full application for such works to be submitted and assessed on its merits as appropriate.

RELEVANT LEGISLATION, POLICY AND GUIDANCE

This application is assessed under Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which grants planning permission for certain types of development described in Schedule 2 of the Order.

The grant of permission is subject to the limitations, conditions, and provisions set out within the relevant Classes of permitted development.

Under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), certain changes of use and associated operations may be permitted subject to prior approval from the Local Planning Authority.

Conservation of Habitats and Species Regulations 2017 (as amended)

RELEVANT PLANNING HISTORY

There is no recorded planning history for the subject building. The following history is recorded for the wider Fullingbridge Farm site.

Proposal / Summary
PL/2022/01803 - Full planning permission Decision - Approve with Conditions Date: 17/6/2022 – Change of Use from Use Class E (Commercial, Business and Service) to a holiday let to include overnight accommodation as a bridal suite.
14/05089/FUL - Full planning permission Decision - Approve with Conditions Date: 11/7/2014 – Change of use of farm buildings to form four office units
W/93/00658/FUL - Full planning permission Decision - Approved Date: 12/8/1993 – Erection of new house and feed dairy cow building to replace existing cubicle buildings and open feed areas
W/79/01020/HIS - Historic apps 1974 to 1983 Decision - Approved Date: 9/10/1979 – Proposed covered yard
W/78/00269/HIS - Historic apps 1974 to 1983 Decision - Approve with Conditions Date: 26/5/1978 – Erection of general purpose building

W/76/00245/HIS - Historic apps 1974 to 1983 Decision - Approved Date: 26/4/1976 – Extension to existing dwelling
W/83/00491/FUL - Full planning permission Decision - Approved Date: 21/6/1983 – Erection of general purpose agricultural storage building
W/82/01230/HIS - Historic apps 1974 to 1983 Decision - Approve with Conditions Date: 11/1/1983 – First floor extension
W/11/02066/FUL - Full planning permission Decision - Approve with Conditions Date: 12/9/2011 – Proposed ground mounted solar PV array
18/02017/CLE - Lawful development: Existing use Decision - Approved Date: 23/4/2018 – Lawful development certificate for existing D2 use (assembly and leisure)

CONSULTATIONS

Heywood Parish Council: No comments received.

Wiltshire Council Highways Officer: Further information is required. The site is accessed off Park Lane which is a single carriageway rural road with passing places limited to private vehicle accesses and verge overruns.

The gymnasium would offer classes to approximately 100 gymnasts each evening over a 4/5-hour period and that the classes will be staggered.

Further information is required to determine the highway impact of the proposal:

- The class timings on each night to determine whether there will be any vehicle movement conflict of vehicles leaving from one class and arriving for the next
- The maximum number of participants per class
- The maximum number of classes being held at any one time
- Will gym, trampolining and parkour all be available at the same time in separate classes/areas or will the same area be used for each type of activity

Wiltshire Council Public Protection Officer: No concerns regarding noise if building is fully enclosed, if not please reconsult with further details on the building's structure.

A planning condition is recommended in respect of land contamination.

ASSESSMENT

This application seeks prior approval under Class R of Part 3 of Schedule 2 of the GPDO, which allows for 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—

(a) falling within one of the following provisions of the Use Classes Order—

- (i) Class B2 (general industrial) of Schedule 1;
- (ii) Class B8 (storage or distribution) of Schedule 1;
- (iii) Class C1 (hotels) of Schedule 1;
- (iv) Class E (commercial, business or service) of Schedule 2; or
- (v) Class F.2(c) (outdoor sport or recreation) of Schedule 2

Does the Proposal Qualify as Permitted Development?

Under the general provisions of permitted development granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), contained within Article 3, Article 3(5) confirms that the permission granted by Schedule 2 does not apply in the case of permitted development allowed in connection with an existing building if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.

This is an important point that should not be overlooked in the application of permitted development rights by Schedule 2. It can also apply where part of building has been constructed by virtue of unlawful building operations. In **Evans v SSCLG [2014] EWHC 4111 (Admin)**, Neil Cameron QC, sitting as a Deputy High Court Judge, held at paragraph 37 *“if the building operations involved in the construction of any part of that building are unlawful, the permitted development rights granted in connection with the existing building do not apply”*.

As set out within the site description, this application relates to a ‘building’ which currently comprises of a steel frame attached to an existing building. There are two vertical supports and a frame erected for the purpose of providing a roof covering. There is no roof, no walls and no floor at the time the site was visited by the case officer pursuant to the determination of this application proposal. As such the use of the ‘building’ amounts only to the use of land since the steel frame provides no function in terms of shelter.

Other than in relation to the grant of permission for an associated curtilage, Class R relates to the change of use of a building. Therefore, in order to be satisfied that permitted development rights apply, the LPA must be satisfied that the building is lawful for the purposes of Article 3 (5).

Whilst the purpose of the prior approval is not to formally determine whether a building is lawful, since there is a separate process for that under the CLUED regime, the following sets out the evidence that has led to the LPA concluding that the proposal does not meet the test of Article 3 (5).

The building to which the frame is attached is subject to a permission for a general purpose agricultural storage building (W/83/00491/FUL refers) which was granted in 1983, however there are no planning history records of an extension to that building which would account for the steel frame that has been erected onto the side of that building.

The Local Planning Authority’s mapping data includes aerial mapping data, although this is not updated every year. The following aerial mapping images show the progression of the site from 2014 to the most UpToDate record.

In 2014, the site was part of the field by 2017 and 2020 there is evidence of an uncovered, unsurfaced yard having been formed with storage of materials (possibly related to agriculture) taking place on the site of the steel frame structure. Evidence of the steel frame is only available in the latest aerial mapping data. Google Earth images indicate that the steel frame structure was erected at some point between 22 April 2021 and 18 July 2021. The extent to which a partially constructed building without planning permission or prior approval being granted may be deemed lawful has not been tested through the consideration of evidence to support a lawful development certificate application. The structure is evidently neither substantially complete, since without a roof or floor the extent of building works of a skeletal frame serves no purpose, nor can the LPA conclude through this application that the structure has become lawful through the passage of time. In the absence of any planning history for its approval and unless certified by application for LDC, the opinion of the LPA is that this is not an existing building for the purposes of this application for change of use under Class R. This does not preclude an LDC application for such for a legal determination being made, which would be determined on its merits.



2014



2017



2020



Google Earth 22/04/2021



Google Earth 18/7/2021



Latest mapping image

With these dated aerial records, the Local Planning Authority concludes that the 'building' identified for this Class R application is both incomplete and unlawful and accordingly the provisions of Class R do not apply, having regard to fundamental requirement set out at Article 3(5).

Additionally, development under Class R is subject to a number of conditions and limitations. Development is not permitted by this Class if any of the specified restrictions apply.

These are set out at Appendix 1 of this report. Subject to compliance with these criteria and any limitations or conditions specified within the Order, the proposed development may only then be considered permitted development.

Having completed the detailed checklist at Appendix 1, it is concluded that the proposed development does not qualify as permitted development under Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), having regard to the provision in Class R.1 which states that:

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;

The subject 'building' did not exist on or before 3 July 2012.

In the case of a building which was brought into use after 3 July 2012, it must have been used solely for an agricultural use as part of an established agricultural unit for a period of at least 10 years. As such, even if an LDC were to succeed to the extent that the 'building' as it exists is deemed to be lawful as a result of evidence that it was substantially complete for the requisite time period to become immune from enforcement action, the 10 period over which a continuous agricultural use of that building could not be met.

The criteria is specifically the use of the 'building' and not the use of land as it exists in the absence of a roof or slab /floor.

The assessment therefore cannot proceed to consider whether prior approval is required by the LPA since it is concluded that the proposed development does not qualify as permitted development on two grounds, and therefore planning permission would be required for the proposed works.

Additionally, the submitted location plan indicates a new access to the site across agricultural land. It is considered that this is outside the scope of Class R and would require either full planning permission or consideration under permitted development criteria elsewhere within the GPDO in the event that prior approval was to be confirmed.

Similarly operational development to complete the construction of the building would need to be considered under a separate planning application which is beyond the scope of the Class R permitted development right for the change of use of a building.

Is Prior Approval Required?

Where a proposal complies with all the provisions limitations set out under the articles of the GPDO and provisions of Class R of Schedule 2, Part 3 of the Town and Country Planning (General

Permitted Development) (England) Order 2015 (as amended), the developer must apply to the Local Planning Authority (LPA) for a determination as to whether prior approval is required for the specified impacts and, if so, whether it should be granted. Due to the fundamental issues identified above, in this case the LPA has not considered 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.

However, the comments of the Council's highways and public protection officers are noted above and the application, as submitted, does not include sufficient information to conclude on the transport and highways impacts of the development or noise impacts.

CONCLUSION

The proposed development has been assessed against the provisions, limitations, and conditions set out in Article 3 and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Based on the submitted plans, supporting information, and the findings of this report, it is concluded that the proposal does not comply with the criteria for permitted development under Class R, and having regard to the overarching provisions of Article 3(5) of the Order and therefore planning permission is required for the proposed works and the application is refused.

RECOMMENDATION: That prior approval be REFUSED.

The subject 'building' on the site comprises a steel frame which has been attached to an existing building without the grant of planning permission or being subject to prior notification procedure for agricultural buildings. In the absence of a lawful development certificate being granted and with the benefit of dated aerial imagery which indicates that the steel frame was not present on site until 2021, it is considered to be unlawful and cannot therefore benefit from permitted development rights, as set out in the Procedural Notes (Article 3 - Permitted Development, criteria (5)(a)) of the Town & Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Furthermore, having regard to the provision in Class R.1 (a), as the evidence indicates that the building did not exist on 3rd June 2012 and has not been present on site for a period of at least 10 years, it cannot be concluded that the building has been used solely for an agricultural use as part of the an established agricultural unit for a period of 10 years before the date development under Class R begins and therefore development is not permitted by Class R of Part 3 of Schedule 3 of the Town & Country Planning (General Permitted Development)(England) Order 2015 (as amended).

APPENDIX 1 – PERMITTED DEVELOPMENT CHECKLIST CLASS R

Class R – agricultural buildings to a flexible commercial use

		Yes / No
R.	Permitted Development Note: <i>If the answer is "Yes", proceed to assessment under R.1. If the answer is "No", the proposal does not qualify as permitted development under this class.</i>	
	Does the development consist 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— (a) falling within one of the following provisions of the Use Classes Order— (i) Class B2 (general industrial) of Schedule 1; (ii) Class B8 (storage or distribution) of Schedule 1; (iii) Class C1 (hotels) of Schedule 1; (iv) Class E (commercial, business or service) of Schedule 2; or (v) Class F.2(c) (outdoor sport or recreation) of Schedule 2; or (b) for the provision of agricultural training.	No – the building is incomplete and unlawful
R.1	Development is not permitted by Class R if - Note: <i>If the answer to any of the questions below is "Yes", the proposed development would not constitute permitted development under this class</i>	
(a)	Was the building not used solely for an agricultural use as part of an established agricultural unit: (i) on 3rd July 2012? (ii) if not in use on that date, when it was last in use before that date? (iii) if brought into use after 3rd July 2012, for a continuous period of at least 10 years before the date development under Class R begins?	Yes – the “building” did not exist in 2012 – it was constructed in 2021 – it has not been in continuous use for 10 years
(b)	Has the cumulative floor space of buildings that have changed use under Class R within the established agricultural unit exceeded 1,000 square metres?	No
(c)	Is the site, or does it form part of, a military explosives storage area?	No
(d)	Is the site, or does it form part of, a safety hazard area?	No
(e)	Is the building a listed building or a scheduled monument?	No