

APPLICATION FOR PRIOR APPROVAL CASE OFFICER REPORT

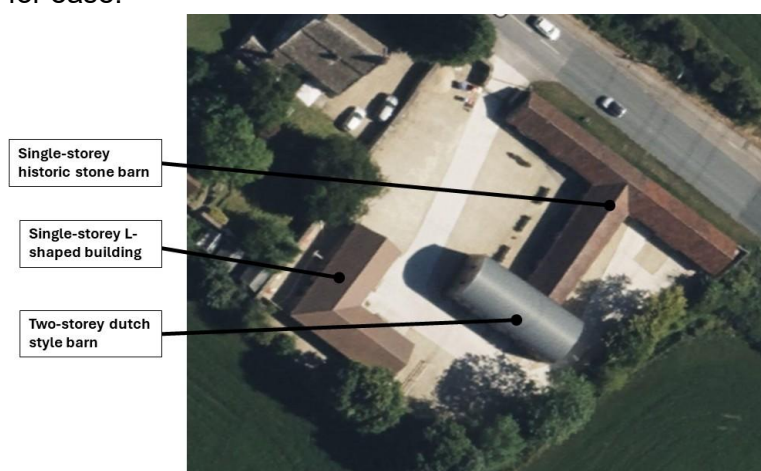
APPLICATION REFERENCE:	PL/2025/09841
APPLICATION TYPE:	Prior Approval Part 3, Class MA: Commercial, business and service uses to dwellinghouses
SITE ADDRESS:	CHURCH FARM, BATH ROAD, SHAW, MELKSHAM, SN12 8EF
DEVELOPMENT DESCRIPTION:	Proposed Change of Use to Create 6 Dwellings
RECOMMENDATION:	Refuse

SITE DESCRIPTION/CONTEXT

The site lies to the immediate western side of the classified A365 'Bath Road' some 170m south of the edge of the settlement of Shaw. Together with Whitley, which is set to the north of Shaw, these settlements form a 'Large Village' within the Melksham Community Area.

That highway forms the north-eastern boundary of the site and to the north-west the site is bound by the residential dwelling of Church Farm House, which is listed at Grade II. To the south-east and south-west is generally open agricultural land.

The site comprises essentially 3no. separate buildings, identified on the annotated plan below for ease:



PROPOSAL

The proposal involves the change of use of the buildings referenced as 'Units 1 – 10' into residential use, to form 6no. residential units. These units will be formed as follows:

- sub-division of the single-storey modern L-shaped building to the south of the site to form 2no. dwellings (1no. 2-bed and 1no. 3-bed);
- sub-division of the two-storey dutch barn style building into 2no. dwellings (both 4-bed), with an entrance lobby in one of these being set within the historic single-storey building to the immediate north'; and

- sub-division of that historic single-storey stone barn building into 2no. dwellings (both 2-bed).

The historic single-storey barn located adjacent to the highway at the northern end of the site has a projecting element to the east of similar form and materials, that element, which was approved for B1 use only under 20/04949/FUL, is excluded from this application and it is stated are intended to remain within that employment use.

Revised plans were submitted during the course of determination to address comments made by the Highways Officer, these relate to parking and bin storage matters and as such are not of direct relevance to the issues for consideration under this application for Prior Approval.

PLANNING HISTORY

Proposal / Summary
20/04949/FUL Erection of extension to commercial premises – Approve with Conditions – 5 August 2020
W/13/00253/FUL STATUS: Closed DECISION: Approve with Conditions DATED: 5 April 2013 – Application to replace extant planning permission reference W/10/02320/FUL (Replacement garage workshop and associated works) in order to extend time limit for implementation
W/10/02320/FUL STATUS: Closed DECISION: Approve with Conditions DATED: 15 September 2010 – Replacement garage workshop and associated works
W/10/00385/PREAPP STATUS: Closed DECISION: West Historic PD/PREAPP response DATED: 11 March 2010 – Proposed extension and alterations
W/08/00356/PREAPP STATUS: Closed DECISION: DATED: – Demolish dutch barn and erect four industrial units
W/07/01004/EUD STATUS: Closed DECISION: Refused DATED: 25 July 2007 – Certificate of lawfulness for existing use as servicing, repairs and sales of vehicles including land rovers
W/05/02331/EUD Repair of motor vehicles and ancillary sales Refused – 25 May 2006
W/97/00395/FUL Convert existing building and rebuild adjoining building to form four industrial units – Approve with Conditions – 19 June 1997
W/91/00827/FUL STATUS: Closed DECISION: Approve with Conditions DATED: 7 January 1992 – Change of Condition No 2 on W88/00207
W/88/00207/FUL STATUS: Closed DECISION: Refused DATED: 24 May 1988 – Use of land to repair vehicles (renewal)
W/88/00206/OUT STATUS: Closed DECISION: Refused DATED: 24 May 1988 – Erection of buildings for business use B1 and ancillary parking, landscaping etc
W/85/00928/FUL STATUS: Closed DECISION: Withdrawn DATED: 1 November 1985 – Change of use of existing buildings to residential use (2 residential units providing ancillary accommodation)
W/81/00735/HIS STATUS: Closed DECISION: Approve with Conditions DATED: 4 September 1981 – Repair of vehicles

RELEVANT LEGISLATION, POLICIES AND GUIDANCE

Statutory Legislation:

- Town and Country Planning Act 1990

- Town & Country Planning (Permitted Development) (England) Order 2015 (as Amended) (GPDO)

National Planning Policy:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide

PRIOR NOTIFICATION PROCESS

Permitted development rights are a national grant of planning permission which 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. 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').

Class MA of Part 3 of Schedule 2 to the GPDO permits:

'Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.'

This application seeks the change of use of the existing buildings into 6no. dwellings (Use Class C3) and this application for prior approval is required to be considered against the provisions of Class MA of the GPDO.

In accordance with Class MA condition MA.2, before beginning the development the applicant is required to apply to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to:

- (a) *transport impacts of the development, particularly to ensure safe site access;*
- (b) *contamination risks in relation to the building;*
- (c) *flooding risks in relation to the building;*
- (d) *impacts of noise from commercial premises on the intended occupiers of the development;*
- (e) *where—*
 - (i) *the building is located in a conservation area, and*
 - (ii) *the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;*
- (f) *the provision of adequate natural light in all habitable rooms of the dwellinghouses;*
- (g) *the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;*
- (h) *where the development involves the loss of services provided by—*
 - (i) *a registered nursery,*

- (ii) *or a health centre maintained under section 2 or 3 of the National Health Service Act 2006,*
the impact on the local provision of the type of services lost; and
- (i) *where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.*

The provisions of Paragraph W of Part 3 of the GPDO are also relevant to this process as it sets out the requirements for the submission and the procedure for applying for prior approval. It states that the Local Planning Authority must have regard to the National Planning Policy Framework in so far as it is relevant to the subject matter of the prior approval, although there is no requirement to have regard to the development plan in the consideration of such an application.

ISSUES

The main issues that need to be addressed in this case for prior approval are set out in the Town & Country Planning (Permitted Development) (England) Order 2015 (as Amended) (GPDO) and are as set out above (as considered in detail below).

CONSULTATION RESPONSES

Melksham Without Parish Council: Objection: matters raised include the principle of development, impact on character and appearance, protection of ecology / biodiversity and flood risk.

WC Highways: No objection subject to conditions / amendments

WC Conservation: No objection subject to conditions

The application has been called to Committee for determination by Cllr Alford, should the recommendation be for approval.

REPRESENTATIONS

In accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), the application was publicised by way of:

- Neighbour notification letters sent to adjoining and nearby properties;
- A site notice displayed near the site;

These methods were used to inform interested parties and provide a period of 21 days for comments to be submitted.

Below is a summary of the representations received during the consultation period. Only material planning considerations have been taken into account in the assessment of this application. Non-material issues, such as property values or private legal disputes, cannot be considered in the determination process. 1no. representation has been received from the immediate neighbour in objection to the application, raising the following points:

- incorrect form of application due to impact on the listed building
- sewerage connection and capacity issues
- water supply and capacity issues
- potentially worsening noise and amenity impacts (with history of such at the site)
- dutch barn has been altered, with consequent amenity impacts
- capacity of services (internet, gas and electric) and potential impact on Church Farm House
- party wall and related drainage issues

ASSESSMENT

As is identified above, Class MA of the GPDO confirms that *'Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order'*, is permitted development.

In the first instance, the GDPO is clear that the provisions of Class MA relate to 'a building' and such consideration needs to be given as to whether the site and proposal constitutes 'a building'. The proposal in fact involves the conversion of 3no. separate buildings – the L-shaped building to the south of the site is clearly physically a building in its own right; the site and planning history in particular the plans submitted with W/10/02320/FUL & W/13/00253/FUL confirm that the recently constructed replacement two-storey dutch barn is a separate building to the historic single-storey brick barn. The proposal does not therefore relate to the change of use of 'a building', but rather to 3no. separate buildings and as such contravenes the scope and parameter of the Class MA provisions.

Whilst it is accepted that the Interpretation Act 1978 provides that words in the singular may include the plural, this is subject to the context of the relevant provision. Class MA is framed around the assessment of the impacts arising from the change of use of an individual building, with prior approval matters that are inherently building-specific. It is therefore considered that the permitted development right is intended to operate on a building-by-building basis, and that separate prior approval applications are required where more than one building is proposed to change use.

Conversely, planning application 20/04949/FUL was explicitly for: *'Erection of extension to commercial premises'* and the scale, form and design of that element clearly reads as an extension to the historic stone barn, the application proposal thus relating to only a *part* of this building.

Notwithstanding these conflicts, there are a number of caveats to this general acceptability set out in paragraphs MA.1, MA.2 and MA.3 of this Class. Paragraph MA.1 of this Class confirms that development is not permitted by Class MA unless the following criteria are met:

Paragraph MA.1 Permitted Development Criteria:

(a)	Deleted 2024	N/A
(b)	<i>unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a</i>	See below.

	<i>continuous period of at least 2 years prior to the date of the application for prior approval;</i>	
(c)	Deleted 2024	N/A
(d)	<i>if land covered by, or within the curtilage of, the building—</i> <i>(i) is or forms part of a site of special scientific interest;</i> <i>(ii) is or forms part of a listed building or land within its curtilage;</i> <i>(iii) is or forms part of a scheduled monument or land within its curtilage;</i> <i>(iv) is or forms part of a safety hazard area; or</i> <i>(v) is or forms part of a military explosives storage area;</i>	Although the site abuts the curtilage of a listed building at its northern boundary, it does not fall within any of the stated designations.
(e)	<i>if the building is within—</i> <i>(i) an area of outstanding natural beauty;</i> <i>(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;</i> <i>(iii) the Broads;</i> <i>(iv) a National Park; or</i> <i>(v) a World Heritage Site;</i>	The site does not fall within any of these stated designated areas.
(f)	<i>if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or</i>	The completed application form confirms that the site does not form part of any agricultural tenancy.
(g)	<i>before 1 August 2022, if—</i> <i>(i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and</i> <i>(ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.</i>	No applications under Class O of the GPDO have previously been submitted for this site and no Article 4 directive has been issued that concerns the site.
(2)	<i>The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—</i> <i>(a) the following classes of the Schedule as it had effect before 1st September 2020—</i> <i>(i) Class A1 (shops);</i> <i>(ii) Class A2 (financial and professional services);</i> <i>(iii) Class A3 (food and drink);</i> <i>(iv) Class B1 (business);</i> <i>(v) Class D1(a) (non-residential institutions – medical or health services); (vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);</i> <i>(vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;</i> <i>(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2</i>	See below.

The application form and submitted information (and site inspection) confirm that the building(s) are either vacant or in a formerly B1 use (now Class E). In terms of Units 1 – 6, these were granted permission under W/97/00395/FUL for: *“Convert existing building and rebuild adjoining building to form four industrial units”* (19/06/1997). Condition no.1 on that permission restricts the use to the repair of motor vehicles, which would have fallen within Use Class B2. More recently (although now somewhat dated), applications W/10/02320/FUL & W/13/00253/FUL approved the replacement of the dutch barn for ‘Garage workshop and associated works’. The Officer’s Report for the latter confirms that: *“The applicant has stated that this site has an industrial use at present and there does not appear to be any variation to this in the planning history”* (paragraph 9.1). The submission made under 20/04949/FUL for the extension to the stone barn confirms in the Planning Statement that: *“The site historically has included a mix of B2 and B1 uses although the recent investment made to improve the buildings has focused on a dominant B1 usage.”* That application was subject to a Condition which restricts use of that part of the building to Class B1, but the red-line boundary relates exclusively to the proposed extension element and is thus not applicable to the wider site.

Publicly available marketing from 2019¹ references the site as accommodating ‘offices and industrial units’. More recent marketing of 2023² states that:

“PROPERTY OVERVIEW

Church Farm is made up of a range of units suitable for a variety of uses. This former farmyard and buildings have been converted and constructed to a high standard with insulation throughout, double glazing and timber clad elevations. Units benefit from an electrically operated roller shutter door. The site also benefits from CCTV, shared WC facilities, allocated and visitor parking, and a secure gated entrance.

PROPERTY FACTS

<i>Property Type</i>	<i>Industrial</i>
<i>Property Subtype</i>	<i>Warehouse</i>
<i>Net Internal Area (NIA)</i>	<i>6,081 sq.ft.</i>
<i>Year Built/Renovated</i>	<i>1960/1990”</i>

Thus, whilst the mix of uses may have altered over time, both the planning history alongside relatively recent marketing confirms the use as being ‘industrial’ and thus falling within Use Class B2. It is noted that the only permitted change of use from Use Class B2 is to a use falling within Use Class B8, i.e. not to within Use Class B1 / Class E. There is insufficient information to conclude therefore that the site falls within former B1 / Class E use, within the context of that lawful B2 use.

Separately, Units 7 – 10 are understood to be currently vacant, having formerly been occupied as a dog grooming salon, which would fall within Class E(c)(ii).

Paragraph MA.2 Prior Approval criteria:

¹ www.hunterfrench.co.uk/

² www.loopnet.co.uk/listing/bath-rd-shaw/28152381/ - Church Farm, Bath Rd, Shaw, SN12 8EF | LoopNet

Paragraph MA.2 of the Class confirms that before any such development occurs the developer must apply to the Local Planning Authority for a determination as to the potential impacts of the development on transport; contamination; flooding; noise; and conservation areas. It also confirms that such development must be assessed with regard the amount of natural light that is afforded to the new unit/s; any potential conflict between uses if the new residential development is to be introduced into a wider industrial site; if the proposals involve the loss of important services; and whether it meets fire safety requirements. This paragraph also confirms that such a prior notification application must not be submitted prior to 1st August 2021 and states that Class W of the GPDO is relevant to the Local Planning Authority's prior approval considerations.

Paragraph MA.2 confirms that any such successful prior notification development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse under this Class must remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.

Paragraph MA.3 provides interpretations of fire safety for the MA.2 assessment.

In considering whether prior approval is required, the Local Planning Authority must have regard as to whether the development would result in an adverse impact on the following matters:

(a) transport impacts of the development, particularly to ensure safe site access:

As is identified above, the site is situated in the countryside, outside of the defined settlement boundary for Shaw and Whitley and is thus in an unsustainable location. However as is also identified above, the Development Plan policies are not relevant to the determination of this application and it is clear that this Class adds a presumption that the change of use from vacant offices, regardless of their location, into a residential use is permitted development subject to the detail. The fact that the existing office is in a countryside location is not therefore relevant to the acceptability (or not) of this proposal.

The proposed access to the site off Bath Road has served the industrial / commercial estate since the original conversion of the buildings and having been consulted the Highway Officer raised no objection in terms of site access or transport and highway impacts.

The Highway Officer did however respond requesting further detail regarding the proposed parking, both quantum and arrangement, as well as demonstrable parking for cycles, bin storage and EV charging for each property. Accordingly, the Applicant provided further plans and clarification on these points, albeit that these are not directly related to the specific matters that can be taken into consideration in this Prior Approval application.

With this having been provided, there are no transport impacts of sufficient magnitude to warrant refusal of the application. However, whilst not a relevant consideration for this Prior Approval application, it is notable that this Prior Approval scheme does present a visually cramped form of development with a dominance of space for parking of vehicles.

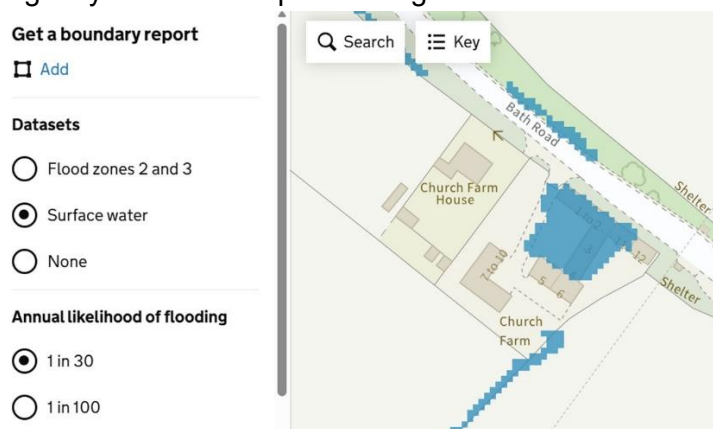
(b) contamination risks in relation to the building:

In light of the former approved industrial use of the site, and without any specific information or confirmation as to users of these industrial units over the last period of years since their conversion / erection, it is considered that risk of contamination cannot be overlooked.

No information has been submitted with this application to demonstrate the likelihood or otherwise of any contamination. The Public Protection Officer been consulted on this application but has not provided a response at the point of determination. That notwithstanding, it is considered that without any information on contamination this would be a justifiable reason to refuse this Prior Approval application.

(c) flooding risks in relation to the building:

The site falls entirely within flood zone1. However, the site is recorded on the Environment Agency flood risk maps as being at risk of surface water flooding, as per the extracts below:



This is also confirmed in the Council's SFRA mapping which shows the site to be at risk from surface water flooding. Furthermore, the site falls within the South Brook catchment area and as such Policy 3 of The Joint Melksham Neighbourhood Plan is relevant in this regard. This states that:

"... Development proposals in locations with known flooding issues should include appropriate mitigation and construction methods, and, where appropriate, contributions towards wider catchment projects. As appropriate to their scale, nature and location, development proposals should demonstrate how flood risk is mitigated. This approach should include measures to reduce the amount of rainwater run-off and incorporate Sustainable Drainage Systems."

The supporting text which explains the context of the South Brook catchment area, states that this: *"... has been identified as a priority flood risk area by both the Environment Agency and Wiltshire Council. Bristol Avon Rivers Trust (BART) have been working in the South Brook catchment area for the delivery of the Natural Flood Management (NFM) works."*

NPPF is clear in terms of requiring consideration of flooding from all sources, with paragraph 173 stating: *"A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding, by following the steps set out below."* Paragraph 176 does explain that certain changes of use application should not be subject to the sequential test, but they: *"... should still meet the requirements for site-specific flood risk assessments set out in footnote 63."*

Accordingly, Footnote 63 of the NPPF advises that: *“In Flood Zone 1, an assessment should accompany all proposals involving: ... land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.”*

Whilst the Applicant's reference to the lack of any flooding at the site is noted, this policy context and very update to date mapping and policy, provides evidence that flooding and drainage issues – and the lack of any Flood Risk Assessment – represent a justifiable reason for refusal of this Prior Approval application.

(d) impacts of noise from commercial premises on the intended occupiers of the development;

The proposals involve the conversion of three buildings within this small-scale industrial / commercial estate to residential, with the retention of part of the single-storey stone barn for commercial use. However, that element of the building retained in employment use was granted permission by way of 20/04949/FUL and that planning permission contains a permission restricting that element to a B1 use. As such, whilst that would be immediately adjacent to the part of that barn which is proposed to change use to residential, it is considered that the B1 use itself, and coupled with the separate parking areas, would not give rise to any adverse noise impacts to any extent which would warrant a reason for refusal in this instance.

(e) where—

(i) the building is located in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

The site is not situated in a conservation area and as such this criterion is not relevant to the consideration of this scheme.

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

The submitted plans show that all habitable rooms will be served by at least 1 no. window in each of the proposed residential units. Whilst some of these do not necessarily represent a particularly high level of amenity in terms of natural light – in particular the living space for the converted Units 1 and 2 has only one opening resulting in a dark kitchen space, it is not considered that this is to an extent which would warrant a reason for refusal of this Prior Approval application. The prior approval of the Local Planning Authority is not required in respect of adequate natural light provision.

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and

As is identified above, the site is situated in the countryside in an established but small-scale collection of commercial units. The site is not designated as an employment area in the WCS, and it is not considered to be an important site for any of the uses identified above. This criterion is therefore met and it is not considered that the prior approval of the Local Planning Authority is required in respect of the protection of important employment sites.

(h) where the development involves the loss of services provided by—

(i) a registered nursery,

(ii) or a health centre maintained under section 2 or 3 of the National Health Service Act 2006,

the impact on the local provision of the type of services lost; [and]

The development does not involve the loss of any such services.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The building(s) that are the subject of this application is under 7 storeys and less than 18 metres in height. It is not considered that the proposed change of use to a residential use is likely to result in an additional fire safety impact for the future occupants of the building.

Other Matters:

The procedural notes for permitted development, in clause 3 of the GPDO, raise only one matter relevant to this prior notification application, as follows:

(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

(a) where the gross internal floor area is less than 37 square metres in size; or

(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

[(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.]

In this instance, the existing buildings are shown to be converted into 2no., 3no. and 4no. - bed dwellings. The following table sets out an assessment of the proposed dwellings against the nationally described space standards:

Unit	No. of beds	Minimum GIA (national standard, m2)*		Proposed
		Single-storey	Two-storey	
1 / 2	2-bed	61 – 70		117
3 / 4	2-bed	61 – 70		76
5	4-bed		97 – 124	105
6	4-bed		97 – 124	128
7 / 8	2-bed	61 – 70		72
9 / 10	3-bed	74 – 95		100

* range depends on occupancy per dwelling

Based on this, the proposals meet the size standards for the size of units and are acceptable in this regard.

PLANNING BALANCE AND CONCLUSION

It is not considered that the proposed development complies with all of the criteria set out in paragraph MA.1 of Class MA of the GPDO. In particular, the proposal relates to more than 1no. building and in addition the planning history of these buildings confirms that their lawful use does not fall within Class E.

In terms of the relevant MA.2 considerations, no information has been submitted with the application regarding contamination and flooding issues and, given the nature of the site constraints and its planning history, this technical information is required and necessary.

RECOMMENDATION:

That Prior Approval is REFUSED for the following reason(s):

1. The application does not meet the requirements of Class MA of Part 3 of Schedule 2 to the GPDO as that permits a change of use of 'a building' and any land within its curtilage, whereas this application proposal relates to 3no. separate buildings, including a part of 1no. of these buildings, which is not proposed to be converted in its entirety. Furthermore, insufficient evidence has been provided to demonstrate that the building(s) the subject of this application all fall lawfully within Use Class E.
2. The site lies in an area shown to be subject to surface water flooding, and within the South Brook catchment area, to which Policy 3 of the Joint Melksham Neighbourhood Plan 2 refers. Coupled with the requirements of the NPPF, the application was not supported by any Flood Risk Assessment and as such would represent a reason for refusal of this Prior Approval application.
3. No information has been submitted regarding site contamination which, given the former industrial use of at least part of the site, which includes garage repairs, is considered necessary in the interests of public safety.