

WHARFE
RURAL PLANNING

DAIRY HOUSE FARM

C D & B SMITH AND PARTNERS

PLANNING STATEMENT

DATE: DECEMBER 2023

REFERENCE: 1341/J220090

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1 INTRODUCTION

1.1 This planning statement has been prepared on behalf of C D & B Smith and Partners. It accompanies an application under Schedule 2, Part 3, Class R of the General Permitted Development Order 2015 (as amended) for prior approval of the change of use of agricultural buildings to a flexible use, specifically as an aparthotel (Use class C1).

1.2 The site address is Dairy House Farm, Croxton Lane, Middlewich, Cheshire, CW10 9LA. As illustrated within the red box in figure 1.

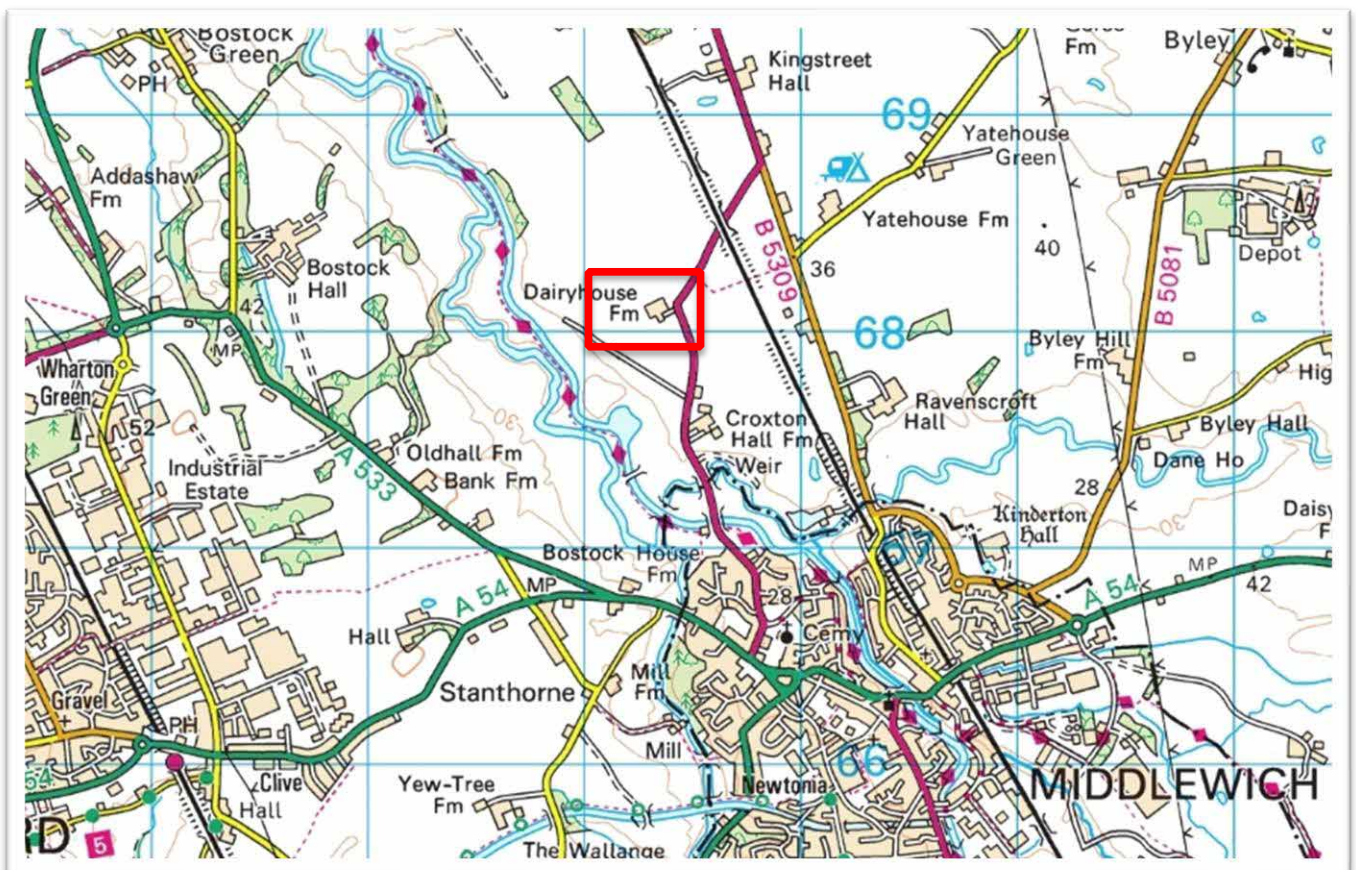


Figure 1 Site Location

2 SITE CONTEXT

2.1 Dairy House Farm was historically a dairy farm and currently comprises a range of agricultural buildings, including a traditional farmhouse and U-shaped red-brick barn, portal framed Dutch barns and a single large dual-pitched portal frame building.

2.2 The site is in current agricultural use, but operations are winding down, the site is still used for the storage of produce from the surrounding fields such as straw and hay. The applicants own the surrounding land, and the machinery used in working the fields is stored within the buildings on the farmstead.

2.3 This application relates to the change of use for three of the portal frame Dutch barns, which lie to the west of the farmstead. The buildings have been in agricultural use since before 3rd July 2012 and are edged yellow in the image below.



Figure 2: Application buildings

2.4 The site image below indicates these barns for which this change of use is applied for.

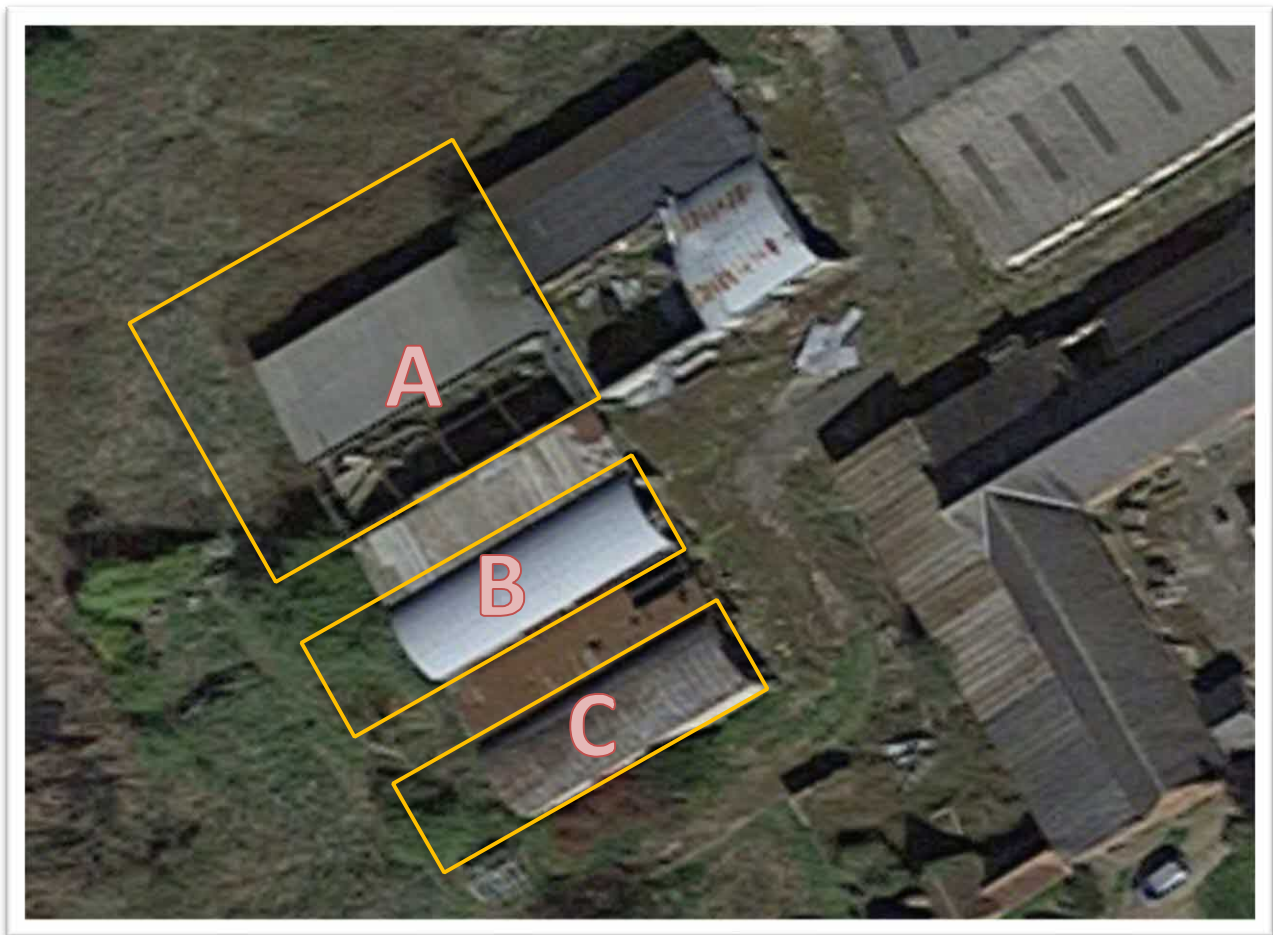


Figure 3: Existing site

2.5 The application buildings are shown below:



Figure 4: Building A



Figure 5: Building B



Figure 6: Building C

3 CLASS R

3.1 In 2012, the Government issued a new set of national policies within the NPPF. The Framework was closely followed by a range of changes to permitted development legislation which sought to make it easier for landowners to make the best use of their property. Permitted development rights have an important role to play in the planning system and incentivise and encourage certain forms of development by providing developers with a greater level of certainty within specific planning controls and limitations.

3.2 Class R (formerly Class M) was introduced in 2015 and allows for certain agricultural buildings to be converted into flexible commercial use without requiring planning permission. This was a significant change and one which was promoted and heralded by the Government. Indeed, in November 2014, Brandon Lewis, the then Minister of State for Housing and Planning, issued a Written Ministerial Statement which stated:

We have reformed permitted development rights to cut through the complexity, free up the planning system, and encourage the conversion of existing buildings. The changes help support town centre, the rural economy and provide much needed homes.

3.3 In another Written Ministerial Statement in March 2015, Lord Ahmed, the Parliamentary Under-Secretary of State for Communities and Local Government, stated:

New permitted development rights are encouraging better use of buildings and supporting town centres, the rural economy and providing much-needed homes.

3.4 Many farms have outdated, redundant or underutilised buildings, originally constructed for the purpose of serving the agricultural enterprise. Technological advancements, larger machinery and changing agricultural practices have seen a large number of agricultural buildings being no longer fit for purpose. Class R permitted development rights enable the re-use of such buildings for commercial purposes and allow farmers to diversify whilst, at the same time, providing attractive locations and buildings for businesses to be located.

4 LEGAL FRAMEWORK

STATUTORY LAW

4.1 Section 58(1)(a) of the Town and Country Planning Act 1990 (as amended) (hereinafter referred to as 'the Act') states that planning permission may be granted by a development order.

4.2 The Town and Country Planning (General Permitted Development) (England) Order 2015 (hereinafter referred to as 'the Order') sets out development permitted under the Order.

4.3 Part 3 Class R of the Order sets out permitted development as:

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.

4.4 Schedule 2, Part 3, paragraph W of the Order sets out the provisions for prior approval.

5 CHANGE OF USE

5.1 Class R of the Order only permits the change of use of a building and no associated operational development. Associated operational development is required to be obtained by the subsequent grant of planning permission. The change of use of the building is subject to a number of criteria being met, which are set out in the table below.

CLASS R – AGRICULTURAL BUILDINGS TO A FLEXIBLE COMMERCIAL USE	
R.1 Development is not permitted by Class R if:	
(a) the building was not used solely for agricultural use as part of an established agricultural unit— <ul style="list-style-type: none"> (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 ten years before the date development under Class R begins 	COMPLIES
(b) the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 500 square metres;	COMPLIES 447 sqm total for the 3 buildings
(c) the site is, or forms part of, a military explosives storage area;	COMPLIES
(d) the site is, or forms part of, a safety hazard area; or	COMPLIES
(e) the building is a listed building or a scheduled monument.	COMPLIES
R.2 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;	OBSERVED

<p>(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;</p>	<p>OBSERVED</p>
<p>(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—</p> <ul style="list-style-type: none"> (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. 	<p>OBSERVED</p>
<p>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—</p>	
<p>(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—</p> <ul style="list-style-type: none"> (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; 	<p>N/A</p>
<p>(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—</p> <ul style="list-style-type: none"> (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, <p>and the provisions of paragraph W (prior approval) apply in relation to that application.</p>	<p>COMPLIED</p>

<p>R.3 – (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.</p>	<p>OBSERVED</p>
<p>R.3 – (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.</p>	<p>OBSERVED</p>
<p>R.3 – (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.</p>	<p>OBSERVED</p>

AGRICULTURAL USE

5.2 In relation to paragraph R.1(a)(i) of the legislation, on the 3rd of July 2012 the buildings were used solely for agricultural business as part of an established agricultural unit by the agricultural partnership ‘C D & B Smith and Partners’. At this date, the application buildings were specifically used for the storage of hay, straw, farm machinery and implements.

6 PRIOR APPROVAL

6.1 Condition 1 of Class R development requires an application to the Local Planning Authority for a determination as to whether the prior approval of the authority will be required as to the transport and highway impacts, noise impacts as well as contamination and flooding risks associated with the proposals. These matters are considered separately below.

TRANSPORT AND HIGHWAYS IMPACTS OF THE DEVELOPMENT

6.2 The site features an access point along Croxton Lane. It is proposed to retain the existing access for the notification buildings. The agricultural use of the site has allowed the unrestricted use of this entrance for many years by large agricultural vehicles without any impacts on highway safety. The site entrance has good visibility in both directions and is considered adequate to meet the needs of the proposed use. The change of use of the buildings is considered to have a negligible effect on the character and number of vehicles accessing the network.

NOISE IMPACTS OF THE DEVELOPMENT

6.3 The occupation of the building as an aparthotel is not considered to present a risk of adverse impacts to the surrounding area from an increase in noise levels. The farm is winding down its operations and the applicant intends to retire and has no succession to the farming business. Notwithstanding this, there are no existing sources of noise pollution that would present a risk of adverse impacts to the occupants of the proposed building uses. Noise mitigation measures are not considered necessary for the proposed development.

CONTAMINATION RISKS ON THE SITE

6.4 The existing buildings and land within their curtilage have not been used for the storage of chemicals or fuel. There are no apparent sources or contamination that could give rise to potential harm to the occupants of the building when used for the proposed flexible use. As such, there is considered to be negligible risk from contaminants. A suitably worded planning condition can adequately deal with any unexpected contamination.

FLOODING RISKS ON THE SITE

6.5 The application site lies outside flood risk zones 2 & 3, as shown in the figure below taken from the Environment Agency website. The site is not within an area that has been notified to the Local Authority by the Environment Agency as having critical drainage problems. The proposal is, therefore, not considered to be at risk of flooding on the site.

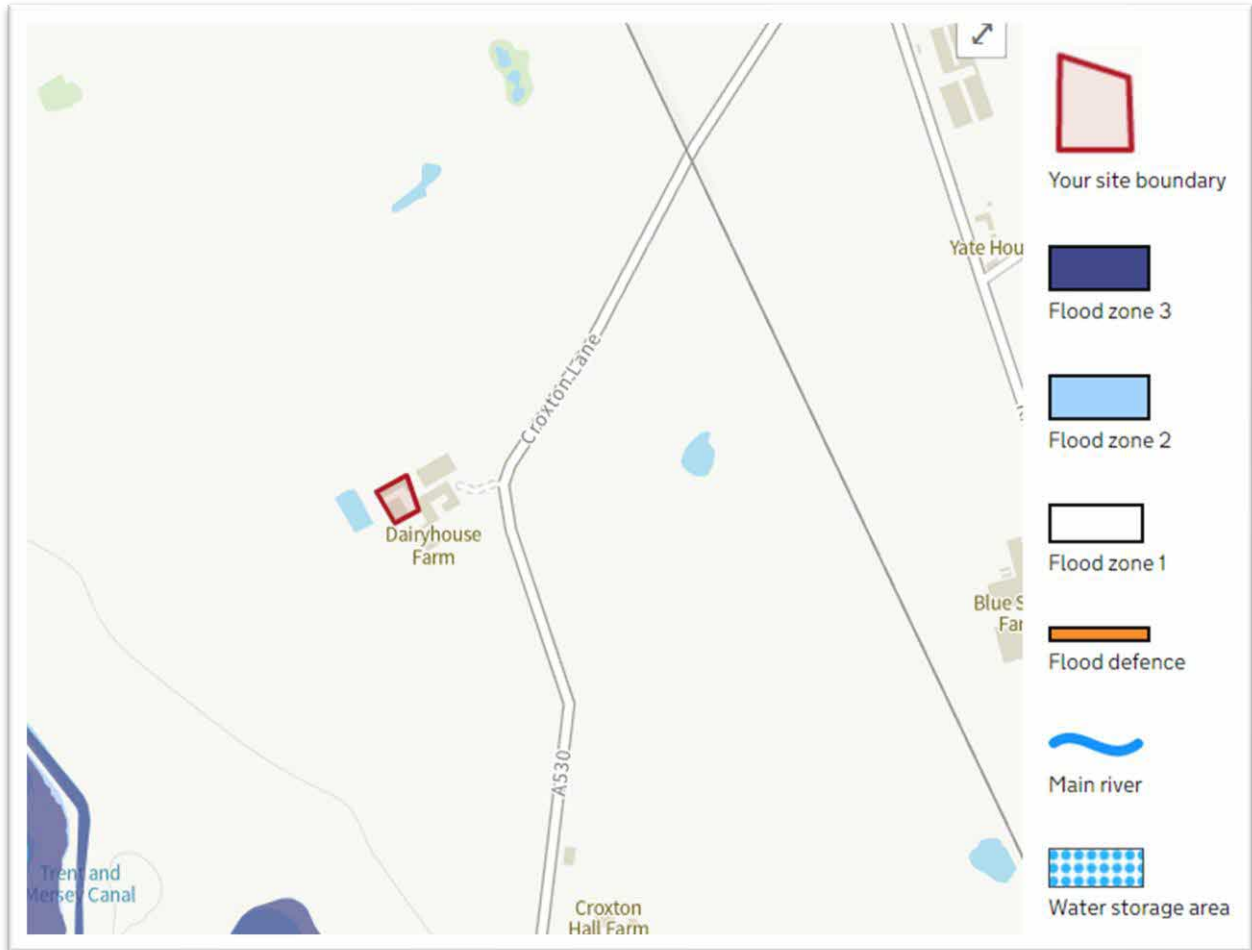


Figure 7 Flood Risk Map

7 RELEVANT APPEALS

3272868 FORMER MUNITIONS DEPOT, LAWN LANE, COVEN WV9 5BA

7.1 This allowed appeal relates to three concrete pads at a former munitions site. Each pad was raised up above ground level, and one pad had steps leading to it. Each concrete pad was surrounded by brickwork. The pads were once part of a complete building that formed a TA centre.

7.2 The Council did not consider the three pads to be buildings for the purposes of Class R, and there was, therefore, a dispute between the parties as to whether the pads benefitted from PD rights.

7.3 In considering the issues of whether the pads constituted buildings and accepting that they once formed part of a complete building, the Inspector noted:

Article 2(1) of the GPDO sets out its interpretation of the 'building': A building is any structure or erection and any part of a building other than; plant, machinery, gates, fences, walls or other means of enclosure. Class R does not provide any further interpretation of the work for the purposes of the Class.

7.4 The Inspector then concluded that:

Given the pads once formed the bases of buildings, each were part of a building. While the rest of the structures have been removed, I find no reason to consider that the pads are no longer part of a building. In particular, both Article 2(1) and Class R of the GPDO are silent as to any requirement for the whole building to still be present.

Therefore, the pads, by way of being permanent structures and a part of a building, are, for the purposes of Article 2(1)(a) and Class R, buildings in their own rights...as such, they benefit from the permitted development rights set out within the Class, and I must consider the relevant prior approval matters.

7.5 This decision confirms that even limited remnants of a former structure can be 'part of a building' for the purposes of Class R. Once that test is satisfied, the building will benefit from permitted development rights. It is then only necessary to consider the matters listed in the legislation, i.e. transport, highways, noise, contamination and flooding risks.

3145599 SOUTH EAST BLOCK, HIGH HOUSE NURSERY, KENT

7.6 The appeal at High House Nursery concerned the change of use of part of an agricultural glasshouse to a flexible commercial use, specifically, a Class C1 hotel.

7.7 The appeal was considered under the same Order as this application. The appeal related to a building that was less complete than the application buildings.

7.8 The Inspector records that the Council refused the prior notification application ‘because it was not satisfied that the physical works required to implement the change of use were building works reasonably necessary to convert the building.’

7.9 The Inspector confirms the matters that should be taken into account for the prior approval under Class R:

‘Before any change of use is implemented, Part R.3(1)(b) requires the developer of a building of the size proposed here to apply for a determination as to whether prior approval is required. The only concerns that can be taken into account in such an application are those in respect of transport, highway, noise, contamination and flooding risks matters.’ (authors emphasis)

7.10 The Inspector went on to outline that the purpose of Class R was for the change of use of the building:

‘Class R only allows for a change of use and not for any associated operational development. In this application, the developers have made clear that they are seeking only to establish the acceptability in principle of the change of use. It is recognised that any associated operational development that affects the external appearance of the building would also require a separate grant of planning permission to authorise it. This is referred to in Parts R.3(3) and (4) of the GPDO.’

7.11 The Inspector concluded that there were no grounds to refuse the application, stating that any building works would be considered through other means:

Therefore, I find no reason to refuse the application on the grounds set out by the Council, or any other grounds. This finding makes no reference to the suitability of the building for conversion, or the extent of the work needed to achieve this and whether they would be ‘reasonably necessary’ for the conversion. These are matters that would be covered by other applications, either for planning permission or building regulations approval.

7.12 This appeal confirms that the matters to be considered by the Local Planning Authority are those set out in the legislation, and they should have no regard to any physical works required to carry out the change of use. Furthermore, the matters to be considered are constrained to transport/highways, noise, contamination and flooding risks.

3254577 TRERAVEL FARM, ST ERVAN, WADEBRIDGE PL27 7RS

7.13 The appeal at Treravel Farm concerned the change of use under Class R of the agricultural buildings to hotel use as an aparthotel. The existing building was an open-fronted agricultural barn with a concrete frame and a fibre cement-sheeted roof.

7.14 The main issue was that the Council considered the proposed work to use the building as a hotel would be of such magnitude as to be a rebuild and therefore fall beyond the scope of the permitted development rights under Class R. However, the Inspector stated:

The permitted development right under Class R is restricted to the change of use and, if agreed, any subsequent physical works are then subject to a planning application.

7.15 The Council drew reference to Class Q, and the findings in *Hibbitt and another v Secretary of State for Communities and Local Government and another* (2016) EWHC 2853 (Admin), and whether a proposal would be considered as a rebuild or a conversion. The Inspector makes the following assessment:

References to Class Q are not directly relevant to the considerations in this appeal. The permitted development rights under Class Q can specifically allow the change of use of the building together with building operations reasonably necessary to convert the building (my emphasis added). Consequently, an analysis regarding whether a proposal would be a conversion (or a rebuild) is appropriate when considering a Class Q proposal. However, this is not the case when considering purely the change of use aspects under Class R where there is no conversion issue to consider. I therefore attribute limited weight to the Council's analysis, derived largely from the approach to Class Q cases, when considering the issues with this Class R proposal.

7.16 The Inspector concluded that there were no grounds to refuse the application, stating that the building is capable of accommodating alternative use under Class R:

In this case, the appeal structure is clearly a building. It is in reasonable condition and capable, as a matter of principle, of accommodating an alternative use. I consider that this allows the

building to be considered under Class R. The evidence indicates, in particular, that the building has been in longstanding agricultural use and that there has been no other buildings within the established agricultural unit that have changed under Class R. I am satisfied that these and the other permitted development limitations under paragraph R.1.(a)-(e) are all met.

CONCLUSION ON APPEALS

These appeals confirm that the matters to be considered by the Local Planning Authority are those set out in the legislation, and they should have no regard to any physical works required to carry out the change of use. In addition, the physical state or level of completion of the building is not an impediment to the successful application of Class R permitted development rights. Furthermore, the matters to be considered are constrained to transport/highways, noise, contamination and flooding risks.

8 COMPARABLE APPROVALS

8.1 The following applications have been subject to approvals by Cheshire West and Chester Council. The buildings are of varying design and physical condition but all considered compliant under Class R. The legislation has not changed since the decisions were issued. The approvals demonstrate the LPA assessment of such buildings.

20/03971/PDR - OULTON HOUSE FARM, TARPORLEY



Figure 8: Oulton House Farm approved Class R

20/00216/PDR - MONUMENT PLACE, CHESTER



Figure 9: Monument Place approved Class R

21/04603/PDR - WIMBOLDSLEY HALL, WINSFORD

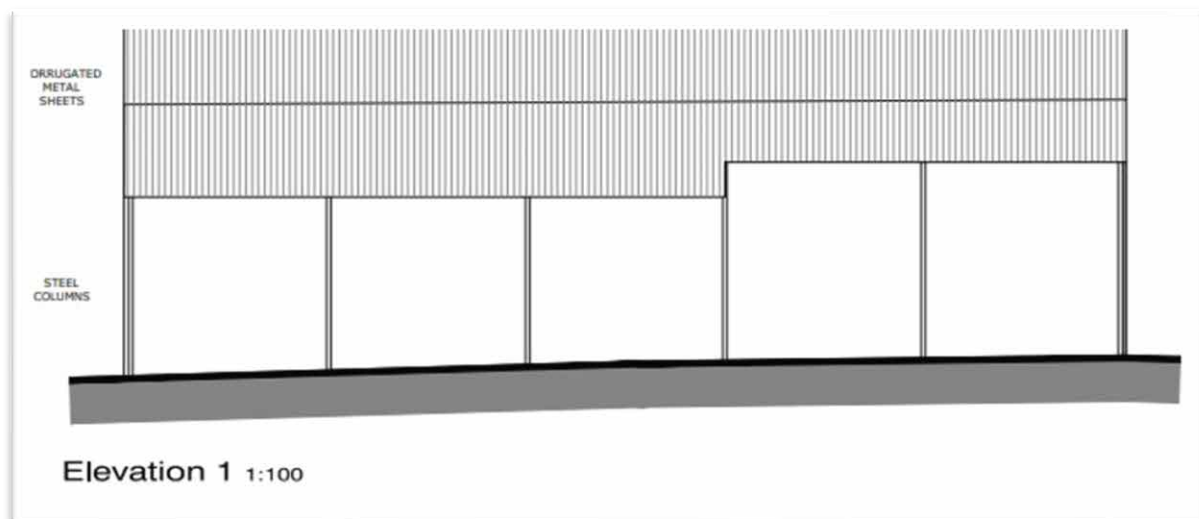


Figure 10: Wimboldsley Hall approved Class R

9 CONCLUSION

9.1 The applicants are seeking an alternative use for the application buildings and are therefore seeking prior approval from the Local Planning Authority under Class R Permitted development for change of use from agriculture to Use Class C1 aparthotel use.

9.2 Class R of the Order confirms that prior approval is sought for the change of use only, and physical building operations to carry out the change of use require planning permission. The appeals presented confirm that the change of use of a building is the only matter to be considered under Class R. Several comparable decisions by Cheshire West on similar buildings are also provided.

9.3 The matters that require prior approval are considered to be adequately addressed, and specific details can be secured by a planning condition. The proposal is considered to meet all the relevant tests enabling planning permission to accrue under the Order. It is, therefore, respectfully suggested that prior approval is not required and can be granted without delay.