



Appeal Decision

Site visit made on 4 February 2025

by **D Wilson BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th February 2025

Appeal Ref: APP/X0415/W/24/3352189

**Former Little Raccoons Day Nursery, 35C Broad Street, Chesham,
Buckinghamshire HP5 3EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mrs B Rudrakumar on behalf of Little Raccoons Day Nursery (Chesham) Limited against the decision of Buckinghamshire Council.
 - The application Ref is PL/24/1793/PAPCR.
 - The development proposed is change of use of ground floor from children's nursery (Class E) to 2 flats (Class C3). Internal works to create flats.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use of ground floor from children's nursery (Class E) to 2 flats (Class C3). Internal works to create flats. at Former Little Raccoons Day Nursery, 35C Broad Street, Chesham, Buckinghamshire, HP5 3EA in accordance with the application PL/24/1793/PAPCR and the details submitted with it including plan nos BROA/2023/LOC Location & Site Plan, BROA/2023/01 Existing Plans, BROA/2023/02 Existing Side Elevations, BROA/2023/03 Existing Front and Rear Elevations, BROA/2023/04 Proposed Plans, BROA/2023/05 Proposed Side Elevations, BROA/2023/06 Proposed Front and Rear Elevations, BROA/2023/07 Proposed Flat A and BROA/2023/08 Proposed Flat B.

Main Issues

2. The main issues are:
 - whether the proposal would result in the loss of services provided by a registered nursery, and
 - the effect of the development on the integrity of the Chiltern Beechwoods Special Area of Conservation.

Reasons

Whether the proposal would result in the loss of services provided by a registered nursery

3. The appeal site contains a two storey building with the appeal proposal relating to the ground floor which is currently vacant. The ground floor was previously used as a nursery albeit this use ceased in 2020.
4. Development under Class MA is permitted subject to conditions including where the development involves the loss of services provided by a registered nursery, the impact on the local provision of the type of services lost must be considered.
5. It is acknowledged by both the Council and appellant that the use of the ground floor as a nursery ceased in 2020. The ground floor has been vacant since this time and there is no evidence to suggest that the use as a nursery could not be taken up again.
6. However, the General Permitted Development Order (GPDO) is clear in referring to the loss of a registered nursery. The appellant states that the nursery is no longer registered and as such, the impact of the loss has already occurred. The Council have not provided any evidence to suggest that the nursery is still registered and therefore, based on the information before me the proposal would not result in the loss of a registered nursery and as such, there is no requirement to consider the impact on local provision.

Beechwoods Special Area of Conservation

7. The appeal site falls within the zone of influence for the Chiltern Beechwoods Special Area of Conservation. Article 3(1) of the GPDO grants planning permission for Schedule 2 Part 3 Class MA development subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017.
8. Regulation 75 provides that it is a condition of the planning permission granted by the GPDO in these cases, that development which is (a) likely to have a significant effect on a European site or offshore marine site, alone or in combination with other plans or projects and (b) not directly connected with or necessary to the management of the site, must not begin until the developer has received written notification of the approval of the LPA under Regulation 77.
9. Under Regulation 78(3)(a), a Regulation 75 approval is to be treated as an approval required by a condition imposed on a grant of planning permission for the purposes of the appeals provisions of the GPDO. As such, Article 3(1) effectively imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat and the proposed development could not be lawfully begun until the process set out in Regulation 77 has been completed. This is a separate process which does not necessarily need to be undertaken before prior approval proceedings.

Other Matter

10. In reaching my decision, I have had regard to the appeal decisions¹ referred to and have taken a consistent approach to dealing with Conservation of Habitats and Species Regulations 2017 in prior approval applications.

Conditions

11. The GPDO does not provide any general authority for imposing conditions in addition to those in paragraph MA.2 (5) and (6) which require that development must be completed within a period of 3 years starting with the prior approval date; and any building permitted to be used as a dwellinghouse by virtue of Class MA is to 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.
12. However, a condition may be attached if it is reasonably related to the subject matter of the prior approval. The Council have requested a condition identifying the approved plans. Instead, I have identified these within the terms of the decision for certainty.

Conclusion

13. For the reasons given above the appeal should be allowed and prior approval should be granted.

D Wilson

INSPECTOR

¹ APP/Y3615/W/22/3295114 and APP/P0240/W/23/3319765