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## Appeal Decision

Site visit made on 8 April 2025

**by Elaine Moulton BA (Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 25 April 2025**

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**Appeal Ref: APP/X0415/W/24/3352098**

**26 High Street, Chesham, Buckinghamshire HP5 1EP**

- 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 Mr Stephen Robinson of Smart Build Construction Ltd against the decision of Buckinghamshire Council.
  - The application Ref is PL/24/1978/PAPCR.
  - The development proposed is change of use of part of the rear of the ground floor into 2 one bedroom dwellings.
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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 part of the rear of the ground floor into 2 one bedroom dwellings at 26 High Street, Chesham, Buckinghamshire HP5 1EP in accordance with the application PL/24/1978/PAPCR and the details submitted with it including plan nos L1219/LP (Location Plan), L1219/11 (Ground Floor Plan as Proposed), and L1219/12 (Elevations as Proposed) and subject to the following conditions:
  - 1) The acoustic mitigation measures as set out in section 6.4 of the Acoustics Central Noise Assessment 20221215-0 R1 v1.1, dated 10 March 2023, shall have been fully implemented prior to the first occupation of the dwellings and retained thereafter.
  - 2) The external glazing works as detailed on plan nos L1219/11 and L1219/12 shall have been fully implemented prior to the first occupation of the dwellings and retained thereafter.

### Background and Main Issue

2. The description of the development in the banner heading and decision above is taken from the planning application form. However, I have removed the superfluous wording 'at 26 High Street, Chesham, Buckinghamshire HP5 1EP', 'all the works proposed are internal works' and 'it is intended to continue to use the front of the property as a Class E (retail) use' to ensure a more concise description.
3. Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (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 as a dwellinghouse.

4. Paragraph MA.1 of the GPDO sets out circumstances where such development is not permitted. Paragraph MA.2(2) indicates that development is permitted under Class MA subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether its prior approval will be required as to several considerations.
5. The Council has assessed the proposal against paragraph MA.1 and considers that it accords with such limitations and restrictions. In addition, it has concluded that prior approval is not required as to the considerations set out at paragraph MA.2(2) or prior approval is required and can be granted. Based on the evidence before me, I concur.
6. The Council has, however, raised concerns due to the proximity of the appeal site to the Chiltern Beechwoods Special Area of Conservation (SAC). Accordingly, the main issue is the effect of the proposal on the integrity of the SAC.

### **Reasons**

7. The site is within the Zone of Influence (ZoI) of the SAC which has been identified as being vulnerable to harm due to recreational disturbance. As the appeal proposal would result in a net gain of two dwellings, it would increase the local population which would lead to additional pressure on the SAC. It is therefore likely that alone and in combination with other development, the proposal would adversely affect its integrity.
8. To mitigate recreational pressure on the SAC, a Strategic Access Management and Monitoring Strategy (SAMMS) has been agreed, which requires a financial contribution to be made for each new dwelling within the ZoI. The level of the contribution is based on Suitable Alternative Natural Greenspace (SANG) being in place, which are alternative destinations for recreation to divert visitors away from the SAC.
9. According to the Council's Statement of Case, SANG is not yet resolved. Therefore, the financial contribution required to mitigate the impact of recreational pressure arising from the proposal on the SAC has not been calculated.
10. As set out under Article 3(1) of the GPDO, subject to the provisions of the Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Regulations), planning permission is granted for the classes of development described in Schedule 2. Regulation 75 provides that it is a condition of any planning permitted granted by the GPDO that development which is likely to have a significant effect on a European site, such as a SAC, must not be begun until the development has received the Council's written notification of approval of an application made under Regulation 77.
11. Accordingly, Article 3(1) and Regulations 75 to 78 of the Regulations operate to impose a pre-commencement condition on all development that is permitted by the GPDO and would affect a European site. Permitted development cannot be lawfully begun until the developer has made a Regulation 77 application and received written notification from the Council that the development would have no adverse effect on the integrity of the SAC. In this case, that would require

compliance with SAMMS through the payment of an appropriate SANG contribution.

12. The Regulation 77 process has not yet been completed in respect of the appeal proposal. However, neither the GPDO nor Regulations 75 to 78 prescribes the sequencing of prior approval and Regulation 77 applications and, therefore, Regulation 77 approval is not required before seeking or granting prior approval. As such, it is not necessary for me to first be satisfied that mitigation has been, or could be, secured, and it does not follow that I should dismiss the appeal in the absence of written approval under Regulation 77 for the proposed development.
13. Nonetheless, given that development cannot be begun until it has received the approval of the Council under Regulation 77, this process allows me to be satisfied that the appeal proposal would not adversely affect the integrity of the Chiltern Beechwoods SAC.

### **Other Matters**

14. The appeal site is situated within the Chesham Conservation Area and there are several adjacent listed buildings. Having considered the proposed development, which would involve minimal external alterations, I concur with the Council's view that it would preserve the character and appearance of the conservation area and would not harm the significance of the listed building as designated heritage assets.

### **Conditions**

15. Paragraph W(13) of the GPDO allows prior approval to be granted subject to conditions reasonably related to the subject of the prior approval. I have imposed the Council's suggested conditions relating to noise mitigation measures and external works to secure satisfactory living conditions for the future occupiers and to ensure adequate natural light is provided to habitable rooms prior to occupation, because they are reasonable and necessary.

### **Conclusion**

16. For the above reasons, I conclude that the appeal should be allowed, and prior approval granted.

*Elaine Moulton*

INSPECTOR