



Appeal Decision

Site visit made on 13 October 2025

by **H Nicholls MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 October 2025

Appeal Ref: APP/U1105/W/25/3368560

The Pharmacy Ltd, Fore Street, Beer, Seaton EX12 3JJ

- 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 Kevin Morley against the decision of East Devon District Council.
 - The application Ref is 25/0539/PDMA.
 - The development proposed is prior approval for the change of use of the ground floor from commercial, business, and services (Class E) to 1no. self-contained flat (Use Class C3) - resubmission of ref. 25/0219/PDMA.
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Decision

1. The appeal is dismissed.

Background and Context

2. Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) permits development consisting of a change of use of a building from a use falling within Class E (commercial, business and service) of the Use Classes Order (UCO) to a use falling within Class C3 (dwellinghouses) of the UCO.
3. Development is permitted under Class MA subject to the limitations set out in paragraph MA.1 and the conditions set out in paragraph MA.2, which include matters in respect of which the developer must apply to the local planning authority for prior approval. There is no dispute between the main parties that the proposal meets the requirements set out in paragraph MA.1. I find no reason to disagree.
4. Further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to, amongst other aspects, an application to the local planning authority for a determination as to whether prior approval is required in relation to the conditions set out in Paragraph MA.2 (2). The Council refused the prior approval on the basis that it does not meet the condition in paragraph MA.2 (2)(e) relating to the impact of the proposed change of use on the character and sustainability of Beer Conservation Area.
5. Since the appeal application was refused, the issue of flood risk has been the subject of further correspondence from the Environment Agency. This is also a matter for consideration under MA.2 (2)(c). The appellant has responded on this issue in writing and thus, the escalation of this matter to a main issue has not resulted in prejudice to either party.

Main Issues

6. The main issues in the appeal are the impact of the proposed change of use on the character and sustainability of the Beer Conservation Area (BCA) and whether future occupiers would be at risk of flooding.

Reasons

Conservation Area

7. The appeal site lies within Fore Street which is the main shopping street within the village. The building of which it forms a part is a two storey building with lower shop front and underpass to one side, with two bay windows on the upper floor frontage.
8. As per the *Beer Conservation Area Appraisal* (1999), the BCA includes a large extent of the fishing village which sits in a narrow valley that slopes down to the sea. Running down to the sea is also the Beer Brook, which flows through a channel along Fore Street, between the many traditional buildings, including some dating back to the 17th century. There are a high number of buildings in the surroundings, including 18th and 19th century cottages and Almshouses that were built by the Rolle Estate, which along with the wide use of Beer stone throughout, give the village its own identity and traditional character. The BCA is therefore significant for its high number of historic buildings, strongly defined landscape setting and the integration of the Brook within the streetscene of its high street.
9. The appeal building is situated within this main thoroughfare of the village within the BCA and has a characterful, traditional shopfront, similar to many others within the village main shopping street. The shopfront is largely glazed, with only low level walls and with a centred doorway opening. The Beer Brook runs in a culverted section beyond the frontage of the building but is open in sections to either side. The appeal building contributes positively to the significance of the BCA.
10. A shop would typically present an active frontage to the street and create activity in the form of comings and goings of people. Even without significant physical changes to the external frontage, the change to a dwelling would undermine this character.
11. Whilst it is suggested that the shopfront would remain, though internal features, such as a screen, would be used to create privacy for future occupiers. The example provided of a screen used locally extends up to around two thirds of the height of the glazed shop front which allows some upper sections to remain open and glazed. However, I am unclear whether the neighbouring building has a layout that includes a bedroom in the front area. In this case, the proposal appears to show both a lounge in one half of the front section and a bedroom in the other. As the light levels in the bedroom would typically need to be controlled to a greater degree, the use of the suggested screen to control privacy is unlikely to provide a complete solution for future occupants. The need for further blinds or curtains on at least part of the elevation would be likely and this would further clutter the frontage and limit its interaction with the street. A planning condition would be insufficient to prevent the installation of such measures in the future.
12. Another aspect which appears unclear is how the change of use would be executed with the proposed flood resilience measures without altering the shopfront or without undermining its contribution to the streetscene. Changes such as flood

doors and an internal freeboard of 900mm (300mm above flood depths) are proposed which appear incapable of being implemented without consequential changes to the frontage of the building. I return to these points below.

13. My attention has been drawn to a local example of a building which has changed use to a dwelling¹ that the Council found not to be harmful to the BCA. Be that as it may, it has not dictated my findings in this appeal. The character and sustainability of the BCA has become more fragile with the losses of other similar buildings already and the current proposal would not aid the preservation of what remains.
14. Furthermore, whilst the evidence suggests that the site was marketed as a going concern as a pharmacy for two years prior to August 2024, there is limited evidence of the marketing effort as a general Class E premises thereafter. The evidence in fact suggests that the premises was advertised as a vacant unit from November 2024 and that the transaction for its acquisition commenced in mid-December 2024. Though it is suggested that marketing on the vacant unit continued until exchange of contracts, the application for the change of use was submitted by early March 2025, raising doubt about the efforts expended on ensuring the ongoing Class E use. The lack of a demand for a general Class E use has not, therefore, been robustly evidenced.
15. Overall, I conclude that the proposed change of use would harm the character and sustainability of the BCA. As such, the proposal would fail to satisfy condition MA.2 (2)(e) of the GPDO and prior approval should not be granted.

Flood Risks

16. The submitted *Flood Risk Assessment* acknowledges that the appeal site is situated in flood zone 3, with part of the rear of the building within flood zone 2 based on the likelihood of flooding from fluvial sources. Whilst the sequential test may not be strictly applicable based on the proposal being for a change of use, the proposal would introduce a 'more vulnerable' category of use than a Class E unit and the exceptions test is therefore applicable.
17. The Environment Agency (EA) response indicates that the 1% annual probability flood events (AEPs) are best described as flash floods, with fast-flowing waters and with little to no ability to offer forewarning of an anticipated flood event. Indeed, the EA indicate it is currently unable to provide a bespoke flood warning system. The evidence also details that flooding of varying levels has occurred in the village centre on at least 10 occasions between 1921 and 2021.
18. The EA indicates that the use of the J-Flow flood model outputs from 2012 and 2017 are not a reliable absolute measure of flood risk and that the FRA is therefore out of date. I have no information about whether there is any more reliable flood modelling more widely available, but the appellant has opted not to undertake site-specific modelling, suggesting that such would be disproportionate to the small scale of the change of use proposal. Consequently, much reliance has been placed on the available data to indicate that the flood depths of the 1% AEP events would be between 0.3m and 0.6m at the appeal site, albeit absent of detail about the relationship to threshold levels above ordnance datum (AOD).

¹ At The Wandle, planning reference 22/1918/FUL

19. The proposed flood resilience measures include providing a freeboard of 0.3m above the maximum flood depths, i.e. a total of 0.9m. Flood doors and a bespoke *Flood Warning and Evacuation Plan* are also suggested. However, there is question about the potential interaction of such physical alterations with the retained shopfront as addressed above. Given that there is uncertainty about the absolute flood risks and lack of clarity as to how flood risk resilience measures would be practically implemented, I cannot be certain that the development would be safe from flooding for its lifetime taking account of the vulnerability of its users.
20. In the absence of robust evidence to the contrary, future occupiers would be at risk of flooding and therefore, the proposal would fail to satisfy condition MA.2 (2)(c) of the GPDO and prior approval should not be granted.

Other Matters

21. I have had regard to the policies of the Local Plan only in so far as they are material to the matters for which prior approval is sought, as the provisions of the GPDO do not require regard to be had to the development plan.

Conclusion

22. For the above reasons, I conclude that the proposal would not be permitted development under Schedule 2, Part 3, Class MA of the GPDO having regard to its impact on the character or sustainability of the Beer Conservation Area and the extent to which future occupiers would be at risk of flooding.
23. The appeal should therefore be dismissed.

H Nicholls

INSPECTOR