



Appeal Decision

Site visit made on 15 July 2025

by **E Catcheside BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th October 2025

Appeal Ref: APP/P0240/W/25/3359647

The Boat Shop, Mentmore Road, Linslade, Central Bedfordshire LU7 2AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Stewart Gilles against Central Bedfordshire Council.
- The application reference is CB/24/02285/VOC.
- The application sought planning permission for “erection of a dwelling house following the demolition of building with extant permission to convert to dwelling house (revised scheme CB/20/02907/FULL)” without complying with conditions attached to planning permission reference CB/21/00523/FULL, dated 11 May 2021.
- The conditions in dispute are Nos 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, 22, and 23 which state that:
 - Condition 2: No development shall take place until details of the existing and final ground and slab levels of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. Such details shall include sections through both the site and the adjoining properties, the location of which shall first be agreed in writing with the Local Planning Authority. Thereafter the site shall be developed in full accordance with the approved details.
 - Condition 4: No development shall take place, notwithstanding the details submitted with the application, until details of the materials to be used for the external walls and roofs of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
 - Condition 5: Development shall not begin until details of the junction of the proposed vehicular access with the highway have been approved by the Local Planning Authority and no new building shall be occupied until the junction has been constructed in accordance with the approved details.
 - Condition 6: No development approved by this permission shall take place until a Phase 1 Desk Study report documenting the ground conditions of the site with regard to potential contamination has been submitted to and approved in writing by the Local Planning Authority. This report shall adhere to BS10175:2011. Where shown to be necessary by the Phase 1 Desk Study, a Phase 2 site investigation adhering to BS 10175:2011 shall submitted to and approved in writing by the Local Planning Authority. Where shown to be necessary by the Phase 2 Site investigation a detailed Phase 3 remediation scheme shall be submitted for approval in writing by the Local Planning Authority. This scheme shall detail measures to be taken to mitigate any risks to human health, groundwater and the wider environment. Any works which form part of the Phase 3 scheme approved by the local authority shall be completed in full before any permitted building is occupied. The effectiveness of any scheme shall be demonstrated to the Local Planning Authority by means of a validation report (to incorporate photographs, material transport tickets and validation sampling), unless an alternative period is approved in writing by the Authority. Any such validation shall include responses to any unexpected contamination discovered during the works.
 - Condition 7: No development shall take place until a scheme for protecting the proposed dwelling from noise from road and rail traffic has been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until such a scheme has been implemented in accordance with the approved details, and shown to be effective, and it shall be retained in accordance with those details thereafter.

- Condition 8: No above ground development shall take place until a landscaping scheme to include all hard and soft landscaping and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained in accordance with the approved landscape maintenance scheme and any which die or are destroyed during this period shall be replaced during the next planting season.
- Condition 9: A scheme shall be submitted for approval in writing by the Local Planning Authority indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved scheme [before the use hereby permitted is commenced / before the building(s) is/are occupied] and be thereafter retained.
- Condition 14: Prior to the occupation of the proposed dwelling, a scheme for the provision of waste receptacles for the dwelling shall be submitted to and agreed in writing by the Local Planning Authority. The receptacles shall be provided before occupation takes place.
- Condition 16: Prior to occupation, a scheme for the parking of cycles on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented before the development is first occupied or brought into use and thereafter retained for this purpose.
- Condition 17: The development shall not be brought into use until a turning space for service vehicles has been constructed within the curtilage of the site in a manner to be approved in writing by the Local Planning Authority.
- Condition 22: Prior to the construction of vehicular parking areas associated with the approved dwellinghouses, a scheme for the charging of electric vehicles shall be submitted to and approved in writing by the Local Planning Authority. Subsequently. The development shall be completed in accordance with these approved details.
- Condition 23: The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers SC/2005830 05, SC/2005830 04, and SC/2005830 02 Rev B.
- The reasons given for the conditions are:
 - Condition 2: To ensure that an acceptable relationship results between the new development and adjacent buildings and public areas (Section 12, NPPF)
 - Condition 4: To control the appearance of the building in the interests of the visual amenities of the locality (Section 12, NPPF)
 - Condition 5: In order to minimise danger, obstruction and inconvenient to users of the highway and the premises
 - Condition 6: To protect human health and the environment
 - Condition 7: To protect the amenity of future occupiers of the dwelling hereby approved
 - Condition 8: To ensure an acceptable standard of landscaping (Sections 12 & 15, NPPF)
 - Condition 9: To safeguard the appearance of the completed development and the visual amenities of the locality (Section 12, NPPF).
 - Condition 14: In the interests of residential amenity and to reduce waste generation in accordance with the Council's Minerals and Waste Local Plan 2014, Policy WSP5 and the adopted SPD "Managing Waste in New Developments" (2006).
 - Condition 16: To ensure the provision of adequate cycle parking to meet the needs of occupiers of the proposed development in the interests of encouraging the use of sustainable modes of transport
 - Condition 17: To enable vehicles to draw off, park and turn outside of the highway limits thereby avoiding the reversing of vehicles on to the highway
 - Condition 22: To assist with the transition to low-emission vehicles in line with paragraph 110 of the National Planning Policy Framework (2019)
 - Condition 23: To identify the approved plan/s and to avoid doubt.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal concerns conditions imposed on a planning permission (reference CB/21/00523/FUL) granted on 11 May 2021 for “*erection of a dwelling house following the demolition of building with extant permission to convert into a dwelling house (revised scheme CB/20/02907/FULL)*” (the original planning permission). It is submitted on the basis that the Council failed to determine the application within the prescribed period.
3. The original planning permission was granted subject to 23 conditions, including pre-commencement conditions. An application¹ was subsequently submitted to the Council to approve details pursuant to conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22. However, that application was not determined.
4. On 23 January 2024, the appellant issued a deemed discharge notice under the provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) in respect of conditions 2, 4, 5, 6, 7, 8, and 9. A second deemed discharge notice was issued on 12 February 2024 in respect of conditions 14, 16, 17, and 22. The appellant therefore considers these conditions to be discharged.
5. Article 30 of the DMPO states that the deemed discharge provisions do not apply where a condition falls within the exemptions listed in Schedule 6, which include conditions relating to the assessment or remediation of contaminated land and highway access, and conditions where the development permitted is likely to have a significant effect on a qualifying European site and is not directly connected with or necessary for the management of the site. It is the Council’s position that these exemptions apply to the appeal scheme and, therefore, that the aforementioned conditions do not benefit from deemed consent.
6. It is common ground that the development has commenced. The Council does not dispute the appellant’s evidence that the development was commenced within the three-year time limit prescribed in condition 1 of the original planning permission. However, the Council does not consider the commencement of the development to be lawful, because it states that there are pre-commencement conditions that have not been discharged. Given the passage of time since the original planning permission was granted, it is the Council’s position that the permission has expired and there is no extant permission to vary through the appeal scheme.
7. In the alternate, the appellant has referred me to case law² which found that a development had lawfully commenced where the pre-commencement conditions had been discharged in substance but not in form.
8. For the avoidance of doubt, I can only consider the proposed variation of the conditions on their merits. I have no remit to decide whether the original planning permission remains extant, whether any works were carried out in breach of a ‘condition precedent’ or indeed whether any condition amounts to a ‘condition precedent’ in law at all. Should it appear to the Council that there has been a breach of planning control, it has the power to take enforcement action if it considers it expedient to do so. The appellant, meanwhile, has the option to apply

¹ Application reference CB/23/03268/DOC

² *R v Flintshire ex parte Somerfield Stores* [1998] PLCR 336

for a lawful development certificate should he wish to ascertain whether works carried out on the land are lawful.

9. Because works have been carried out on the site in connection with the original permission, I shall determine the appeal under Section 73A of the Town and Country Planning Act 1990 (the TCPA) rather than Section 73, because the appellant is seeking planning permission for development already carried out.
10. The site lies within the zone of influence of the Chiltern Beechwoods Special Area of Conservation (the CBSAC), which is a European site as defined in the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). Evidence demonstrating harm to the CBSAC was published in March 2022, which post-dates the grant of the original planning permission. Consequently, the original planning permission was not subject to a screening exercise to identify the likelihood of adverse effects on the CBSAC occurring, and no mitigation to avoid any such effects was secured.
11. The Chiltern Beechwoods Special Area of Conservation: Mitigation Strategy for Ashridge Commons and Woods Site of Special Scientific Interest (V1 dated 15 November 2022) (the Mitigation Strategy) confirms that applications will be subject to screening at the earliest stage in the planning process for their potential to impact upon the CBSAC. This includes applications for the variation of conditions where it relates to a development that has not previously been subject to screening, as is the case here. Consequently, and given my statutory duty under the Habitats Regulations, it is necessary for me to consider the effect of the proposal on the CBSAC, and I have dealt with this matter as a main issue in this appeal. In doing so, I have taken account of the comments made by the parties in respect of the CBSAC and its' implications for the appeal.

Main Issues

12. The appeal seeks permission to vary the approved plans listed in condition 23 to allow for the insertion of dormer windows in the roof. Additionally, the appeal seeks to alter the wording of conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22 so that they require compliance with the details that the appellant considers have deemed consent.
13. The Council has stated that it does not consider the proposed amendments to the approved drawings would give rise to harm and, therefore, it has not identified any conflict with development plan policies in respect of the proposed variation to condition 23. Based on the evidence and my observations of the site and its surroundings, I see no reason to take a different view.
14. Therefore, the main issues in this appeal are:
 - (a) the effect of the development on the integrity of the CBSAC;
 - (b) whether conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22 benefit from deemed consent; and
 - (c) the effect of the proposed variations to conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22, having regard to my conclusions in respect of main issue (b), relevant development plan policies, and any other relevant considerations.

Reasons

Integrity of the CBSAC

15. The CBSAC is designated for the purpose of protecting its qualifying features, which include beech forests on neutral to rich soils; dry grasslands and scrublands on chalk or limestone; and Stag Beetles. It encompasses a large area of land including the Ashridge Commons and Woods Site of Special Scientific Interest. The integrity of the CBSAC is under threat from the damage, contamination, fire, and other impacts that arise through the recreational use of the CBSAC. The increased population associated with new housing would be likely to increase the number of visitors to the CBSAC and, therefore, would exacerbate the harm caused through recreational activity. The conservation objectives are to ensure the integrity of the habitats site is maintained and restored.
16. If this appeal were to be allowed, the outcome would be the grant of a fresh planning permission for the dwelling. Therefore, it is necessary for me to consider the effects of the whole development whose implementation would be authorised by my decision on the CBSAC, and not solely the proposed variations to the conditions.
17. I note that planning permission has previously been granted for the conversion of an administration building on the site to a dwelling, which is required to be demolished prior to the commencement of the appeal development through existing condition 3. There is no evidence that the application for the conversion of the administration building was subject to screening for effects on the CBSAC, or that mitigation was secured to avoid any adverse effects occurring. Moreover, the Council has stated that the residential use of the administration building has not commenced, and this has not been disputed by the appellant.
18. Consequently, the appeal scheme would lead to an increase in the number of households in the area and, by association, the recreational pressure on the CBSAC. On this basis, I cannot rule out the likelihood of adverse significant effects occurring to the CBSAC. In accordance with my statutory duties under the Habitats Regulations, an Appropriate Assessment is therefore required.
19. The Mitigation Strategy sets out a range of strategic mitigation measures that seek to address the effects of housing growth on the CBSAC. These measures include Strategic Access Management and Monitoring (SAMM) projects, which aim to reduce the effects of recreation within the boundary of the CBSAC through communication and engagement activities. Suitable Alternative Natural Greenspace (SANG) is another strategic mitigation measure, which aims to provide alternative recreational resources to divert pressure away from the CBSAC. The Mitigation Strategy sets out that all qualifying development, which would include the appeal proposal, must make proportionate financial contributions towards SAMM; and must either provide a new SANG or financially contribute towards a strategic SANG project. In its advice to the Council, Natural England has stated that contributions towards both SAMM and SANG would be required in this instance.
20. The appeal scheme does not include any mitigation in respect of the CBSAC, and there is no effective mechanism before me through which financial contributions towards SAMM and SANG could be secured. Furthermore, there is no evidence of overriding public interest that would indicate the appeal development should be

permitted, or that there would be compensatory measures to offset the harm that would be caused.

21. Consequently, there is insufficient evidence that the development would preserve the integrity of the CBSAC. The proposal is therefore contrary to the National Planning Policy Framework (the Framework) insofar as it seeks to avoid, mitigate, and compensate for biodiversity harm. There would also be conflict with the Habitats Regulations, which state that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of a European site.

Whether conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22 benefit from deemed consent

22. Paragraph 2(1)(c) of Schedule 6 of the DMPO states that planning conditions are exempt from the deemed discharge provisions where the development permitted is likely to have a significant effect on a qualifying European site and is not directly connected with or necessary to the management of the site.
23. As I have set out above, the deemed discharge notices were issued on 23 January 2024 and 12 February 2024, which post-dates the publication of evidence demonstrating harm to the CBSAC and the associated Mitigation Strategy.
24. It is unfortunate that the Council did not appear to undertake a screening exercise in respect of the CBSAC when it received the applications to discharge the conditions and, furthermore, that it did not determine those applications within the statutory time period. However, I have found that the development is likely to have a significant effect on the CBSAC. Given that the development is not directly connected with or necessary to the management of the CBSAC, it follows that the conditions are exempt from the deemed discharge provisions under the terms of paragraph 2(1)(c) of Schedule 6 of the DMPO and conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22 do not benefit from deemed consent.

The effect of the proposed variations to conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22

25. As I have set out above, the appeal seeks to vary the disputed conditions so that they require compliance with the schemes for which deemed discharge notices were served. However, I have found these conditions do not benefit from deemed consent; and I must therefore consider the proposed amendments on this basis.
26. I have been provided with some consultee comments in respect of the details of the schemes submitted to discharge the disputed conditions, and I note that the Council has not raised any substantive objections to the details provided. However, the scope of this Section 73A appeal is limited to the consideration of the merits of the conditions, and not the merits of the schemes that were submitted to discharge the conditions. Should the appellant wish to have the merits of the schemes submitted considered through the appeal process, it would have been necessary for an appeal to be submitted under Section 78(1)(b) of the TCPA. There is no such appeal before me.
27. The matters covered by the conditions in dispute are relevant considerations that seek to ensure the development is acceptable in terms of its effects on the character and appearance of the area, highway safety, contamination, living conditions, sustainable travel modes, and climate change. There is no suggestion in the evidence that the conditions as originally imposed were unnecessary or

unreasonable; and I have not been directed to any change of circumstance that would suggest it is no longer necessary for the requirements of the conditions to be complied with. Indeed, the appellant has stated that the conditions referred to in this main issue should be reapplied in the event that I find they do not benefit from deemed consent.

28. To vary the conditions as proposed would remove the opportunity for the Council to consider the merits of the schemes submitted and, therefore, I cannot be satisfied that the proposal would not lead to harm in respect of the aforementioned relevant considerations. Consequently, the proposed variations to conditions 2, 4, 5, 6, 7, 8, 9, 14, 16, 17, and 22 would conflict with the following policies of the Central Bedfordshire Local Plan 2015-2035 (July 2021): Policy HQ1, which seeks to ensure development reinforces local distinctiveness, avoids unacceptable noise effects, and supports the sustainable management of waste; Policy T2, which aims to safeguard highway safety; Policy CC8, which secures the remediation of land and seeks to avoid harm through pollution; and Policy T1, which supports a modal shift towards sustainable forms of transport.

Planning Balance and Conclusion

29. No harm would arise through the proposed alterations to the approved plans listed in condition 23. However, the other harms I have identified bring the development into conflict with the development plan when read as a whole. In this circumstance, planning permission should normally be refused unless material considerations indicate otherwise.
30. The appellant suggests that the Council is unable to demonstrate a five-year supply of housing, and this has not been disputed by the Council. The delivery of housing therefore carries positive weight as a matter of principle. However, even if I were to find that paragraph 11 d) of the Framework is engaged due to the housing land supply position, the harm that would be caused to the CBSAC would provide a strong reason for refusing the development under the provisions of paragraph 11 d) i. and Footnote 7 of the Framework. Consequently, the presumption in favour of sustainable development does not apply.
31. The material considerations in this case do not indicate that a decision should be made otherwise than in accordance with the development plan. Therefore, for the reasons given above, the appeal should be dismissed.

E Catchside
INSPECTOR