

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0852	Case Officer:	Joanne Fisher
Application Type:	Prior Not. Comm. to Dwell house Class MA		
Proposal:	Change of use of Class E commercial, business and service to C3 residential		
Site:	Reign Gallery, 26 Railway Approach, East Grinstead, West Sussex, RH19 1BP, , ,		
Validation Date	28 Mar 2025	Overall Expiry Date:	25 Apr 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Prior Approval is Granted	Recommendation Date:	16 May 2025
Target Date:	23 May 2025	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	16 May 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0852

**Reign Gallery, 26 Railway Approach, East Grinstead, West Sussex, RH19 1BP, ,
Change of use of Class E commercial, business and service to C3 residential
Mr E Ciftdal**

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

Highways Authority

No objection.

MSDC Environmental Protection

No objection.

MSDC Contaminated Land

No objection.

MSDC Housing Standards

Comments sent to the Agent in respect of compliance with Housing Standards legislation concerning room sizes, means of escape, heating, ventilation and lighting.

Town Council

The Committee of the 28 April made no comment.

INTRODUCTION

This application seeks a determination under Part 3, Class MA of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) whether prior approval is required for the change of use of Class E commercial, business and service to C3 residential at Reign Gallery, 26 Railway Approach, East Grinstead.

RELEVANT PLANNING HISTORY

07/03695/FUL - Three storey extension to rear of building and lightwell to front to be surrounded by railings/fence. Convert basement storage area in to 1 no. bed flat. Ground floor entrance to remain as shop. First and second floor to provide 1 no. 2 bed flat. Additional door to be added to front to provide access to upstairs flat. Approved.

09/01549/COU - Proposal to change usage from A1 to mixed A1/A3 usage to accommodate a traditional sweetshop with sit down tea room to rear. Approved.

DM/23/2955 - Three storey rear extension and roof alterations. Refused.

SITE AND SURROUNDINGS

26 Railway Approach is a north facing, end of terrace building with a shopfront. It is constructed of brick, with a tiled roof and upvc windows. At the front of the building it has two storeys but to the rear, due to changing land levels, it has three. The ground floor is currently vacant, whilst the lower ground floor and first floor are two separate flats. The first floor flat also has a bedroom within the loft space. The property has previously benefited from a flat roof, three storey extension to the rear.

The application site is situated within the built up area of East Grinstead, within the Town Centre. It is also on Primary Shopping Frontage. Neighbouring properties are located to the south, east and west, whilst the highway is to the north.

APPLICATION DETAILS

It is proposed to convert the ground floor commercial element of the building from commercial, use (Class E) to form 1no. 1-bed flat.

Plans show that this would provide an open plan living and kitchen area, a shower room and a bedroom. The flat would have an internal floor area of some 37 square metres.

The flat would be a car free development

LEGAL FRAMEWORK AND LIST OF POLICIES

As this is not a planning application, the Mid Sussex District Plan and the East Grinstead Neighbourhood Plan are not relevant to the determination of this application.

The application falls to be assessed against Part 3, Class MA of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such any matter raised that falls outside of these considerations cannot be taken into account. Class MA relates to commercial; business and service uses to dwellinghouses and states:

Class MA - commercial, business and service uses to dwellinghouses

Permitted development

MA. 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 falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.

Development not permitted

MA.1. —(1)Development is not permitted by Class MA—

(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

(d) if land covered by, or within the curtilage of, the building—

(i) is or forms part of a site of special scientific interest;

(ii) is or forms part of a listed building or land within its curtilage;

(iii) is or forms part of a scheduled monument or land within its curtilage;

(iv) is or forms part of a safety hazard area; or

(v) is or forms part of a military explosives storage area;

(e) if the building is within—

(i) an area of outstanding natural beauty;

(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;

(iii) the Broads;

(iv) a National Park; or

(v) a World Heritage Site;

(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or

(g) before 1 August 2022, if—

(i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and

(ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order—

(a) the following classes of the Schedule as it had effect before 1st September 2020—

(i) Class A1 (shops);

(ii) Class A2 (financial and professional services);

(iii) Class A3 (food and drink);

(iv) Class B1 (business);

(v) Class D1(a) (non-residential institutions - medical or health services);

(vi) Class D1(b) (non-residential institutions - crèche, day nursery or day centre);

(vii) Class D2(e) (assembly and leisure - indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;

(b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule 2.

Conditions

MA.2.—(1) Development under Class MA is permitted subject to the following conditions.

(2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

(a) transport impacts of the development, particularly to ensure safe site access;

(b) contamination risks in relation to the building;

(c) flooding risks in relation to the building;

(d) impacts of noise from commercial premises on the intended occupiers of the development;

(e) where—

(i) the building is located in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

(h) where the development involves the loss of services provided by—

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost; and

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

(3) An application for prior approval for development under Class MA may not be made before 1 August 2021.

(4) The provisions of paragraph W (prior approval) of this Part apply in relation to an application under this paragraph as if -

(a) for paragraph (e) of sub-paragraph (2) there were substituted—

"(e) where—

(i) sub-paragraph (6) requires the Environment Agency⁵⁸ to be consulted, a site-specific flood risk assessment;

(ii) sub-paragraph (6A) requires the Health and Safety Executive to be consulted, a statement about the fire safety design principles, concepts and standards that have been applied to the development,";

(b) in the introductory words in sub-paragraph (5), for "and highways impacts of the development" there were substituted "impacts of the development, particularly to ensure safe site access";

(c) after sub-paragraph (6) there were inserted—

"(6A) Where the application relates to prior approval as to fire safety impacts, on receipt of the application, the local planning authority must consult the Health and Safety Executive.";

(d) in sub-paragraph (7) for "(5) and (6)" there were substituted "(5), (6) and (6A)";

(5) Development must be completed within a period of 3 years starting with the prior approval date.

(6) 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.

Interpretation of Class MA

MA.3. *Development meets the fire risk condition referred to in paragraph MA.2(2)(i) if the development relates to a building which will—*

(a) contain two or more dwellinghouses; and

(b) satisfy the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

When determining the application, the Local Planning Authority should also have regard to the National Planning Policy Framework as far as relevant to the subject matter of the prior approval, as if the application were a planning application.

ASSESSMENT

Having regard to the permitted development criteria as set out under Class MA.1., the land covered by or within the curtilage of the building does not fall within a SSSI, nor does it form part of a listed building or land within its curtilage, nor form part of a scheduled monument or land within its curtilage, nor form part of a safety hazard area, nor form part of a military explosives storage area. The building is not located within an AONB, National Park or any of the other designated sites set out under criteria MA.1. (e). In addition, the site is not occupied under an agricultural tenancy.

It is also a requirement that the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval. After the 1st September 2020 this relates to Class E (commercial, business and service). The Order defines the term 'building' as follows:

"building"—

a) includes any structure or erection and, except in Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16, Class T of Part 19 and Class ZA of Part 20, of Schedule 2, includes any part of a building; and

b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure'.

The accompanying planning statement sets out that the building has been in commercial use and has been used as a tattoo parlour. This would fall under Class E and thereby the development would satisfy the requirements of the Order in this regard.

In view of the above, it is considered that the proposed change of use under class MA would constitute permitted development and the proposal therefore falls to be considered against the following matters set out below:

Transport impacts of the development

The proposal would result in a car free development.

The Highways Authority has been consulted on the proposal and has advised that:

'the movements associated with Class E use have done so safely with no known safety highways concerns, and C3 residential uses are considered less intensive. The Local Highway Authority (LHA) do not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network'.

The Highways Authority has suggested the inclusion of secure and covered cycle parking provision being implemented as cycling is a viable option in the area. However, there is no space within the site to accommodate this.

It is acknowledged that the site is in a sustainable location within a town centre location close to bus stops, the train station and local services.

Contamination Risks

The Council's Contaminated Land Officer has considered the application. They have no specific comments regarding the potential for contaminated land based on the available data regarding the possibility of contaminated land.

However, they note that the absence of evidence is not necessarily evidence of absence, and the developer should be aware there may still be potential risks or hazards associated with the land that is not apparent from the available data.

In light of the above, it is considered that there would be no contamination risks in relation to the proposal.

Flooding Risks

The site is within flood zone 1 and at very low surface water flood risk. The proposal would not increase the footprint of the building on the site.

No comment has been raised by the Drainage Engineer.

On this basis, the proposal is deemed acceptable in terms of potential flooding risks.

Noise from Commercial premises

Commercial properties surrounding the site consist of a take-aways, a dry cleaners and newsagents and a barbers. Opposite the site to the north is the car park for The Broadway a public house. Between the application site and this neighbouring commercial property is the highway.

The Council's Environmental Protection Officer has considered the application. They state that they *'foresee no problem with regard to noise from commercial premises (we are unable to comment on other noise sources under this class).'*

There are residential properties already within the building and wither side of the building. It is considered that the surrounding commercial premises will not give rise to an adverse impact and that proposal is thereby considered acceptable in respect of this matter.

Provision of adequate natural light in all habitable rooms

Paragraph X of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states that *"habitable rooms" means any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms'.*

The conversion would retain the existing windows to the front and rear of the building. These windows would serve the open plan living area and the bedroom. These windows are not obstructed by surrounding buildings.

It is considered that the habitable rooms would have adequate daylight levels and having regard to the above, and without evidence to the contrary, it is therefore considered that the proposal accords with condition MA.2(2)(f) of Schedule 2, Part 3, Class MA.

Impact on loss of services

The development does not involve the loss of a registered nursery or health centre.

Dwelling Space Standards

Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out in relation to permitted development that:

'(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

*(a) where the gross internal floor area is less than 37 square metres in size; or
(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March.*

(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.'

This requirement came into effect for prior approval applications submitted from the 6th April 2021.

The proposal is to form a 1no 1-bed flat. Having measured the plans, the bedroom would have a floor area of some 10.6 sqm. As such it would provide a single bedroom for 1 person and the dwelling would thereby be a 1-bed 1-person flat.

The technical housing standards requires a 1-bed 1 person dwelling with a shower room to have an internal floor area of some 37sqm. The submitted floor plan shows that the flat would comply with the minimum requirements set out in the national guidance.

National Planning Policy Framework

The site lies within a sustainable location and would assist in meeting a housing need of smaller units within East Grinstead. It is not considered that the proposal would conflict with any of the policies within the NPPF.

Ashdown Forest

Article 3 of the General Permitted Development) (England) Order 2015 (as amended) states:

'(1) Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.'

In addition, sections 75, 76, 77 and 78 of the Habitats Regulations, 2017 state:

General development orders

'75. It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

*(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site,
must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).*

General development orders: opinion of appropriate nature conservation body

76.—(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for its opinion as to whether the development is likely to have a relevant effect.

(2) The application must give details of the development which is intended to be carried out.

(3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where it considers that it has sufficient information to conclude that the development will, or will not, have such an effect, it must notify the applicant and the local planning authority in writing of its opinion.

(5) If the appropriate nature conservation body considers that it has insufficient information to reach either of those conclusions, it must notify the applicant in writing indicating in what respects it considers the information insufficient, and the applicant may supply further information with a view to enabling it to reach a decision on the application.

(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 77, "a relevant effect" means an effect of a kind mentioned in regulation 75(a).

General development orders: approval of local planning authority

77.—(1) An application to the local planning authority for approval, as mentioned in regulation 75, must—

(a) give details of the development which is intended to be carried out; and

(b) be accompanied by—

(i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and

(ii) any fee required to be paid.

(2) For the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by it.

(4) If in its representations the appropriate nature conservation body states its opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site's conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

General development orders: supplementary

78.—(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is £30.

(3) Approval required by regulation 75 is to be treated—

(a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and

(b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.'

As the site lies within 7km of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) the applicant is therefore required to mitigate the impact of this development on the Ashdown Forest. This is through managing access (visitor) behaviour and monitoring both birds and visitors, together with provision of an alternative greenspace to attract visitors away from Ashdown Forest. This would be achieved through financial contributions which would be secured through a legal agreement. An informative is placed on this decision such that the applicant is required to apply formally to the Local Planning Authority to mitigate this impact under S 77 of the Habitats Regulations.

The proposed development was modelled in the Mid Sussex Transport Study (Updated Transport Analysis) as a windfall scheme such that its potential effects are incorporated into the overall results of the transport model, which indicates there would not be an overall impact on Ashdown Forest. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

Additionally, the site is in a sustainable location and close to the railway station and bus stops, so it is considered the proposed development would not have a significant in combination effect on the Ashdown Forest SAC.

CONCLUSION

In conclusion, it is considered that there are no flooding or contamination risks in relation to this proposal and that the transport and highways impacts and potential noise from commercial premises are acceptable. In addition, it is considered that the flat would result in adequate light to the habitable rooms proposed.

The proposal accords with the criteria set out under Class MA, Part 3, Schedule 2, of the GPDO (as amended), and it is considered to be acceptable with regards to the considerations under this prior approval. On this basis prior approval for the proposed change of use is required and can be granted in accordance with the details submitted.

Decision: Prior Approval is Granted

Case Officer: Joanne Fisher