



Delegated Report

Householder Planning Application

Planning Application No: 20240510

Location: Tops Pizza 7 Queen Street Gravesend Kent

Description: Application for the approval of condition 3 attached to planning permission reference 20210130 relating to a sound insulation assessment shall be carried out.

Applicant: Mr Ali Yazdi, Top Pizza Ltd

Site Visit Date: N/A

Preliminary Matters

The cover letter included with this application states the room above the shop is used exclusively as a rest area for employees during their breaks. The letter requests that condition 3 be discharged accordingly:

To Whom It May Concern,

I am writing to formally request the discharge of the condition 3 pertaining to the usage of the room located above the shop. This space is utilized as a residential area. It serves exclusively as a rest area for Tops pizza staff members during their breaks. As such, it does not function as a separate rented out flat, and its primary use aligns with providing a comfortable environment for employee rest and rejuvenation during work hours. We kindly ask for the condition to be discharged accordingly. Please also refer to attached noise survey report Reference No.18237

This Application for Approval of Details Reserved by Condition is to assess whether Condition 3, of Approved Application 20210130, can be discharged. There is no planning history to indicate a change of use of the residential flat above and it would be incorrect procedure to discharge the condition based on this information. The applicant is encouraged to seek pre-application advice if further assistance into the correct procedure is required. Notwithstanding the above, the application is assessed below.

Submitted Documents/Plans

Application Form;
Supplementary Information – Cover Letter; and
Supplementary Information – Sound Insulation Test Report.

Relevant Planning History

Reference	Description	Decision	Decision Date
20210130	Application for change of use of ground floor from retail (Use Class E(a) to hot food-takeaway (sui generis), installation of ventilation/extraction ducting and relocation of external stairs to the rear.	Permitted	11.05.2021

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 – Development & Design Principles

Paragraph 33 of the NPPF (2023) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2023), the Council will also seek to replace these.

National Planning Policy Framework (2023)

- Section 2 – Achieving Sustainable Development
- Section 12 – Achieving well-designed and beautiful places

Consultations, Publicity and Representations

Consultees

GBC – Environmental Protection Team

The Sound Insulation Test undertaken by Clement Acoustics has been reviewed. The methodology of the assessment is fine. However, the test demonstrates that the sound insulation between the commercial use on the ground floor and the flat above is inadequate. The required level stated in the condition to be achieved is $D_{ntw} + C_{tr} 53 \text{ dB}$ (10dB(A) better than that required by Building Regulations ADE). The level measured in the 1st floor living room was $D_{nT,w} + C_{tr} 35 \text{ dB(A)}$ and in the bedroom it was $D_{nT,w} + C_{tr} 34 \text{ dB(A)}$. These figures represent a considerable failure in the level required indicating that the sound insulation between the commercial and residential is sub-standard, and in that respect, the occupants of the flat will be living in a potentially unsuitable and noisy environment.

Unfortunately, no remediation/mitigation measures were included in the report which could improve the sound insulation of the ceiling/floor partition.

Based on the result, Condition 3 cannot be discharged.

GBC Commercial Health

No objection in principle.

The following comments are made for the information of the applicant.

Health and Safety

In these premises Gravesham Borough Council (GBC) Environmental Health will be the enforcing authority. The applicant must ensure that these premises comply fully with the Health and Safety at Work (etc) Act 1974 and all relevant regulations made there under.

If the room above the shop is to be used exclusively by staff during their breaks, then the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992 need to be considered.

For information and advice on health and safety matters check out the HSE website www.hse.gov.uk or contact the Environmental Health team on commercialhealth.admin@gravesham.gov.uk

Officer's Analysis

This is an application for approval of condition 3 attached to planning permission reference 20210130 in relation to details of a sound insulation assessment.

Condition 3

Prior to the first use of the development hereby permitted, a sound insulation assessment shall be carried out and submitted to and approved in writing by the Local Planning Authority. The Assessment shall include details of the substantially enhanced sound insulation performance of the construction that separates the residential and commercial unit, which shall aim to resist the transmission of airborne sound such that the weighted standardised difference ($D_{nT, W} + C_{tr}$) is not be less than 53 decibels (i.e. an enhancement of the minimum levels stated in the Building Regulations of 10dB). The scheme shall then be installed prior to the first operational use of the site in accordance with the approved details and shall thereafter be retained and properly maintained in accordance with the approved manufacturer's specifications.

Reason: *To safeguard the amenities of occupiers the adjoining residential property and in accordance with Policy CS19 of the Gravesham Local Plan Core Strategy 2014.*

The following has been submitted to discharge condition 3

- Application Form;
- Supplementary Information – Cover Letter; and
- Supplementary Information – Sound Insulation Test Report.

Gravesham's Commercial Health raise no objection in principle but draw the applicants attention to Health and Safety.

Gravesham's Environmental Protection Team have reviewed the information provided in relation to condition 3. Although the methodology of the assessment is fine, the comments state:

'the test demonstrates that the sound insulation between the commercial use on the ground floor and the flat above is inadequate. The required level stated in the condition to be achieved is $D_{ntw} + C_{tr}$ 53 dB (10dB(A) better than that required by Building Regulations ADE). The level measured in the 1st floor living room was $D_{nT,w} + C_{tr}$ 35 dB(A) and in the bedroom it was $D_{nT,w} + C_{tr}$ 34 dB(A). These figures represent a considerable failure in the level required indicating that the sound insulation between the commercial and residential is sub-standard, and in that respect, the occupants of the flat will be living in a potentially unsuitable and noisy environment.

Unfortunately, no remediation/mitigation measures were included in the report which could improve the sound insulation of the ceiling/floor partition.

Based on the result, Condition 3 cannot be discharged'.

Therefore, the development fails to safeguard the amenities of occupiers of adjoining and nearby residential properties contrary to Policy CS19 of the Gravesham Local Plan Core Strategy 2014. As such, it is recommended that condition 3 is not discharged.

Condition 3 cannot be discharged.

Recommendation

This application is for the approval of condition 3 relating to planning permission reference 20210130. As the information provided does not satisfy condition 3, it cannot be discharged, and it is therefore recommended that this application is refused.

Refusal

Case Officer:	Mrs Lucy Hankin	Team Leader:	Richard Hart
Signed:	L Hankin	Signed:	<i>R Hart</i>
Dated:	22nd August 2024	Dated:	29th August 2024