

Delegated Report

Householder Planning Application

Planning Application No: 20230268
20230269

Location: 157 Milton Road Gravesend Kent

Description: 20230268 - Conversion of the property from a vacant restaurant to 6x1 bed flats.

20230269 - Application for Listed Building Consent for the conversion of the property from a vacant restaurant to 6x1 bed flats.

Applicant: Mr Singh

Site Visit Date: 28 April 2023

Submitted Documents/Plans

- Application form;
- Drawing no. 002 Rev. A – Existing Plans and Elevations;
- Drawing no. 003 Rev. A – Proposed Plans and Elevations;
- Drawing no. 004 Rev. A – Existing and Proposed Elevations;
- Heritage Statement.

Relevant Planning History

None.

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS05 – Gravesend Town Centre Opportunity Area
- CS07 – Economy, Employment and Skills
- CS11 - Transport
- CS12 – Green Infrastructure
- CS14 – Housing Type and Size
- CS18 – Climate Change
- CS19 - Development & Design Principles
- CS20 – Heritage and the Historic Environment

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards
- H5 – Increasing the Housing Stock by the Conversion of Existing Buildings
- TC2 – Listed Buildings
- TC3 – Development Affecting Conservation Areas

- TC7 – Other Archaeological Sites

Paragraph 33 of the NPPF (2021) 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 (2021), the Council will also seek to replace these.

Other material considerations

The Council has a statutory requirement under Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in considering whether to grant listed building consent for any works to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, the Council has a statutory duty in considering whether to grant planning permission for development which affects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, states that with respect to buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

National Planning Policy Framework (2021)

- 2 – Achieving Sustainable Development
- 4 – Decision-making
- 6 – Delivering a sufficient supply of homes
- 7 – Ensuring the vitality of town centres
- 8 – Promoting healthy and safe communities
- 9 – Promoting sustainable transport
- 12 – Achieving sustainable development and well-designed places
- 15 – Conserving and enhancing the natural environment
- 16 – Conserving and enhancing the historic environment

Given Gravesham's current inability to demonstrate a 5 year housing land supply (a 3.27 year supply has most recently been calculated within the published statement), and as the delivery of housing was substantially below (less than 75%) that required by the Housing Delivery Test, the housing delivery element of Core Strategy Policy CS02 must be regarded to be out of date, as required by the Paragraph 11(d) of the NPPF. This requires that in regard to housing development, planning permission should be granted unless:

- i. "the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

In the Gravesham context, the policies referred to in paragraph 11(d)(i) above are those set out in the NPPF at footnote 6 (rather than those in development plans) relating to any of the following:

- Habitats sites (and those sites listed in NPPF paragraph 176)

- Sites of Special Scientific Interest;
- Green Belt,
- Local Green Space,
- Areas of Outstanding Natural Beauty
- Irreplaceable habitats;
- Designated heritage assets (& other heritage assets of archaeological interest, see NPPF footnote 63); and
- Areas at risk of flooding or coastal change.

In determining applications for planning permission involving housing, the Council will therefore apply a weighted balance in favour of granting planning permission in accordance with relevant case law and guidance, having regard to the acceptability or otherwise of the proposals when evaluated against development plan policy, the need to make efficient use of land (paragraph 123(c)) in context, the relative contribution the proposal makes towards the alleviation of any shortfall in housing delivery at that time and any other considerations material to the proposed development.

Supplementary Planning Guidance

- 2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020;
- Technical Housing Standards – nationally described space standard (2015);
- SPG 4 - KCC Parking Standards (2006);
- King Street Conservation Area Character Appraisal (2009)
- Management Plan Gravesend Town Centre Conservation Areas (2009)

Consultations, Publicity and Representations

Consultees

GBC Conservation Officer

The subdivision appears excessive to achieve the number of units proposed and will erode the original plan form; and therefore the proposals are not in keeping with the significance, causing harm to the listed building.

The heritage statement has no information regarding the proposals impact on the fabric of the building and records none of the surviving interiors, such as staircases, joinery, doors, ceilings, etc. Only one chimney stack is indicated on the plans, in the restaurant seating rooms on first and second floors; there are clearly chimney stacks showing on the roof (Google Streetview/Aerial) – have chimney breasts been removed or omitted from the survey plans; photos of these rooms would support the drawings. There is also no attempt to map the evolution of the building, the plan suggests two town houses at one time that were eventually linked with the addition of rear extensions; was the façade remodelled at the time of the building becoming a convent or were the two staircases to serve different functions? There is no information about service runs and fire/sound separation and how these will be dealt with and so ability to assess the impact of the proposals as a result of building control requirements.

The excessive subdivision of the plan will result in harm to the significance of the listed building and it is not possible to assess the further impact of the proposals due to the lack of supporting information.

GBC Environmental Protection

Having reviewed the submitted information, the following comments and advice is offered regarding this application:

Noise from external sources:

The property is in a busy town centre location adjacent to the A226 one-way system which is heavily

trafficked. No consideration has been given by the applicant to traffic noise with habitable rooms being located at the road frontage of the building on both the 1st and 2nd floors.

Being a town centre location, this area can also be noisy at night from people noise associated with the late-night economy - people coming and going from late night pubs, bars, restaurants, takeaways including the existing use on the ground floor of 157 etc).

There is also likely to be noise from kitchen extracts, external condensers and other plant associated with these late-night venues, a number of which are in this part of Milton Road. This includes the 2 restaurants on the ground floor 157 – no information is shown on the submitted plans of the location of any ducting, fans or other plant/equipment.

Noise from early morning or out of hours deliveries to both the existing restaurants on the ground floor and other commercial premises may also give rise to noise.

Internal noise:

The proposal indicates that commercial (restaurant) use is to remain on the ground floor although the 2 premises are currently vacant. As such, noise could be an issue unless suitable sound insulation is provided between the ground and first floor. No information has been supplied regarding existing plant/equipment/ductwork associated with these premises. The noise insulation standards contained in the Building Regulations are the minimum criteria for use between separate residential uses and therefore Building Regulation noise insulation standards are likely to be less than adequate for protecting an adjoining residence from a commercial use.

In addition, there are some concerns with the stacking arrangements of the proposal. The bathroom of flat 2 is below the bedroom of flat 6, the bedroom of flat 2 is below living area of flat 6 and the bedroom of flat 3 is below living area of flat 5. Rooms such as living rooms and bathrooms can have higher noise levels than bedrooms particularly at night-time, which could result in sleep disturbance.

Being a Listed building, it is possible that the sound insulation quality of the internal floor/ceiling and also wall partitions may not be that robust. As the building is Listed providing suitable and sufficient sound insulation for both internal (room to room) noise transmission and also insulating against external noise may be difficult to achieve without significant structural alterations. These alterations are likely to be contrary to Conservation stipulations.

Noise Impact Assessment:

In order to address the concerns regarding both external and internal noise, a noise assessment needs to be undertaken by a suitably qualified person and submitted with any planning application. The assessment must address the impact of the following on the residential amenity of any future residents of the proposed flats and be undertaken in accordance with the relevant standards and guidance such as BS 8233:2014 and BS4142:2014:

- Traffic noise
- Noise from fixed building services/mechanical plant/equipment etc noise associated with the nearby commercial uses (including the use on the ground floor)
- People noise associated with the use of the late-night town centre uses at night (including the use on the ground floor)..
- Early morning delivery noise to commercial uses
- Internal noise/sound insulation
- Noise from any mechanical ventilation systems if required as a mitigation measure for air quality (see below)

The quality and the standard of the sound insulation properties of the building should be assessed to ensure that future residents are not impacted by internal noise eg noise from the commercial premises on

the ground floor and noise from flat to flat. To address this, the noise assessment should include details of the assessment methodology and any enhanced sound insulation performance of the construction that separates the residential and ground floor commercial use and internal partitions between flats. This should resist the transmission of airborne sound such that the weighted standardised difference (DnT, W + Ctr) is not less than 53 decibels (i.e. an enhancement of the minimum levels stated in the Building Regulations of 10dB).

The assessment should look at any required mitigation measures to ensure that internal noise levels are appropriate. Overheating and ventilation must also be considered in the design of any mitigation.

Air Quality:

This area is within the A226 One Way System Air Quality Management Area (AQMA) declared for exceedances of the annual Air Quality Objective (AQO) for nitrogen dioxide (from traffic). With the proposed conversion from a restaurant to residential flats, new sensitive receptors will be introduced into an area recognised as having poor air quality. In this respect, air quality is considered to be a material planning concern and measures need to be investigated and put into place to ensure that there is no detrimental impact on future occupiers of the flats. Bearing this in mind, it is appropriate that a condition be applied to any planning permission that requires the applicant to undertake an air quality assessment and propose suitable mitigation measures as required.

It is advised that as habitable rooms of the flats on the 1st floor front the A226, that an appropriate scheme is likely to include the requirement for 1st floor rooms with windows facing the roadside to be upgraded and sealed so as to prevent pollution from entering the residential unit and a MVHR system be installed as a means of alternative ventilation and cooling. The installation of a MVHR system is also recommended for the front 2nd floor rooms, again as a means of alternative ventilation and cooling to having windows open. This will also provide the occupants with choice i.e. to close windows to shut out noise from traffic or people making use of the night-time economy.

To deal with the external/internal noise, air quality and other matters, the following conditions are recommended:

External Noise:

- a) A noise impact assessment shall be carried out and submitted to the LPA for approval demonstrating that:
 - 1. The internal ambient noise levels in all habitable rooms, including the roadside rooms of the proposed residential dwellings shall not exceed the guideline LAeq values found in Table 4 of BS8233:2014
 - 2. The maximum internal noise levels in all habitable rooms should not exceed 45dB L_{Amax} more than 10 times per night in accordance with the Professional Practice Guidance on Planning & Noise and the WHO Guidelines for Community Noise.
 - 3. The rating noise from fixed building services/mechanical plant/equipment, including any air systems, associated with the development shall be at least 10dB below the existing LA90 background level at the nearest noise sensitive receptors (i.e. dwellings) when measured and assessed in accordance with BS4142:2014

The noise impact assessment must take into account traffic noise, mechanical plant and equipment associated with commercial activities, air systems that are required, as well as the night-time economy.

Where compliance with these criteria will rely on closed windows, the development must include sufficient and suitable ventilation to affected residential dwellings by means other than opening

windows to ensure that the internal noise levels required by the above conditions can be retained all year round.

- b) Prior to first occupation of the flats, a suitable post-completion demonstrating compliance with a) shall be submitted to and approved, in writing, by the Local Planning Authority

The approved details shall be maintained for the lifetime of the development.

Internal noise:

Prior to the first occupation of the HMO units, a sound insulation assessment shall be carried out, submitted to and approved in writing by the Local Planning Authority. The Assessment shall include details of the assessment methodology and the sound insulation performance of the internal wall partitions, internal floor/ceiling partitions and also adjacent party wall partitions. The sound insulation performance of these shall resist the transmission of airborne sound and impact sound to demonstrate that the minimum levels stated in the Building Regulations are capable of being complied with. The assessment will also include details of any proposed works to achieve these levels.

Any works identified being required in order to achieve these minimum levels shall be implemented and evidence provided (if necessary, by way of a further sound insulation assessment report) for approval by the Local Authority prior to first occupation.

Air Quality:

- a) The applicant must submit an air quality assessment undertaken by a suitably qualified person which should include an scheme of air quality mitigation for approval **prior to determination of this application** which should include the installation of an air system (or air systems) which positively pressurises all relevant residential units i.e. brings in more air than it extracts so that no air seeps into the residential unit through the fabric of the building or doors when people are entering and leaving etc. This requirement applies to the rooms on the first and second floor roadside of Milton Road. The scheme must include the following:
- a heat exchange unit,
 - noise attenuation
 - must bring in air from the upper most and furthest point away from the source of pollution i.e. the traffic on Milton Road, and
 - must be sited away from other pollution sources e.g. flues, soil and vent pipes and must not bring in odour from any commercial extraction system.
 - Windows to the affected rooms on the 1st floor shall not have trickle vents and shall be fixed shut.

The applicant will be provided with the checklist of points that must be considered and included in the scheme and which must be adequately demonstrated to the LPA by the submission of required information, plans, commitments etc. in order for the scheme to be approved.

- b) The approved scheme must be installed, **before occupation**. The installed scheme must be commissioned, before occupation, by an independent ventilation engineer to ascertain if the flow rates are correct and that it is fit for purpose i.e. that it fulfils its purpose of positively pressurising the residential units so that pollution cannot enter from the roadside and is not drawn into the property through the air system. The commissioning report must be submitted to the LPA including a signed declaration from the engineer that they are satisfied that it is fit for purpose it has been required for i.e. prevention of air pollution entering the building.

The LPA will visit the site following commissioning to ensure the approved systems are installed, seen working and are in the correct residential units etc.

Code of Practice on Construction and Demolition:

Please apply to prevent nuisance from noise and dust during the conversion and construction occurring to nearby premises.

Smoke Control Informative:

The proposed development is situated in a smoke control area. As such, only authorised smokeless fuels as listed in the Smoke Control Areas (Authorised Fuels) Regulations 1991 shall be burnt or fireplaces/appliances exempted by Smoke Control (Exempted Fireplaces) Orders shall be utilised. Exempt appliances are appliances (ovens including pizza and tandoori ovens, wood burners and stoves) which have been exempted by Statutory Instruments (Orders) under the Clean Air Act 1993. These have passed tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting smoke. They must be fitted and used according to manufacturer's instructions and they can only be used for the fuel for which they are designed. When purchasing fuels and fireplaces the applicant should clarify with the vendor their suitability with respect to use in Smoke Control Areas. For further information, including confirmation that an appliance and/or fuel is suitable for use in a smoke control area, the applicant should contact the Council's Regulatory Services air.quality@gravesham.gov.uk

Drainage/sewerage informative:

The foul sewage shall be removed by means of the mains drainage system and not by the use of non-mains sewerage systems, unless connection to the drainage system is not reasonably practicable.

Asbestos informative:

Owing to the likelihood of the existing building containing asbestos products, the applicant should be informed to contact the Health and Safety Executive (HSE) for advice on the submission of a suitable method statement for removal. Any asbestos found on site must be removed in a controlled manner by an appropriately qualified operator. This is in the interests of safeguarding the amenities of the surrounding area and safety.

No response from:

- National Amenity Societies

Neighbouring properties

20230268 – 15 neighbouring properties were consulted plus site and press notices – overall consultation expiry date was 19 May – one response received (objection) the comments of which can be summarised as follows:

- Concerned at impact of an additional number of vehicles needing parking.

20230269 – Site and press notices – overall consultation expiry date was 19 May – no responses received.

Officer's Analysis

The application site consists of a three storey building situated on the southern side of Milton Road opposite the junction with Berkley Road. The building has two Class E retail units at ground floor – Kimoyo's & The Cake Box and first and second floors have a lawful use as a restaurant although this is currently vacant.

The building is grade II listed, located in the King Street Conservation Area, the A226 One Way System, Gravesend Air Quality Management Area (AQMA), the Thames Estuary And Marshes Ramsar Buffer Zone, the Gravesend Town Centre Opportunity Area and in an Area of Archaeological Potential.

The proposal is for planning and listed building consent for the conversion of the property from a vacant restaurant to 6x1 bed flats.

The principal considerations in the assessment of this application are:

- Principle of Development;
- Whether the proposal would protect the architectural and historic interest of this grade II listed and preserve or enhance the character and appearance of the Upper Windmill Street Conservation Area;
- Whether the proposal would provide acceptable living conditions for future occupiers of the flats;
- Impact on ecology/biodiversity;
- Other matters

Principle of Development

The site is within the urban boundary of Gravesend which is covered by Policy CS02 (LPCS) which prioritises development in the urban area as a sustainable location for development. Policy CS05 (LPCS) states that the Gravesend Town Centre Opportunity Area will be the principal focus for town centre related economic and social activity in the Borough and that this will be achieved by, amongst other things, encouraging a mix of employment and residential uses. It is stated that the provision of residential uses on upper floors will be supported subject to achieving a satisfactory living environment.

In summary therefore, it is considered that there support for the principle of the development but all of principle considerations will need to be looked at to assess whether it is acceptable in regard to them too.

Whether the proposal would protect the architectural and historic interest of this grade II listed building and preserve or enhance the character and appearance of the King Street Conservation Area

The application building is grade II listed and situated in the King Street Conservation Area. The plans show no external works are proposed and it is internal alterations only to enable the flat conversions.

Internally there are a number of works proposed. It is proposed to remove several walls across the first and second floors, most of these are situated in the early 20th century extension part of the building and their removal is therefore considered acceptable however, there are some walls that are proposed to be removed in the original front part of the building which are a concern. There is a wall at first floor level dividing the front and back rooms which is shown to be removed but which may potentially be original fabric and there is also part of what may be the original rear wall of the building at second floor level is shown to be removed. The proposal also includes the installation of a number of new walls at first and second floor levels.

The removal of those certain walls and the construction of new walls in the front part of the building is of concern as this may potentially involve the removal of original/period fabric and would certainly erode the original plan form of the building

A Heritage Statement has been submitted with the application but it is lacking in detail and does not contain the level of detail of what a Heritage Statement should do. As the Conservation Officer states, it has no information regarding the impact the proposal would have on the fabric of the building and records none of the surviving historic fabric. A Heritage Statement should include a description of the significance of this heritage asset and a description of the contribution of its setting to that significance; provide a schedule of, and justification for the proposed works, provide an assessment of the impact of the proposals on the asset's significance and an assessment of how harm will be minimised and the significance will be preserved and enhanced.

The Heritage Statement states that the proposed conversion has been designed in a way that no original fabric of the building has been altered, that the proposal will significantly help in enhancing and bringing this

listed building into use, that no changes or alterations are to be made to the external façade of the building and that the proposed development will be a positive enhancement of the conservation area. However, the application does not actually provide the information or level of detail that is required to demonstrate that there would be no harmful impact on this listed building or the Conservation Area. The Heritage Statement does not provide sufficient detail on the significance of the listed building, what features it retains together with how the building has evolved and how the proposed works will impact on the significance of the listed building. As the Conservation Officer advises, a photographic survey of each room would support the drawings and the Heritage Statement should then provide the detailed information on the schedule of proposed works and the impact they would have on the significance of the listed building.

From the information submitted, the extensive sub-division of the building through the removal of walls and the erection of a number of new walls to divide the upper floors of the building into 6 flats would erode the original plan form of the building which is part of the significance and character of the building. Insufficient information has also been submitted to demonstrate what the full impact of the proposal would be on the rest of the fabric of the listed building.

Furthermore, with such proposals as this and being a flat conversion in a listed building the Council would require the proposed plans to show full details of all of the works that would be required under the Building Regulations for the flat conversion to take place at application stage in order that the full impact of the proposal could be assessed for the impact on the listed building. This detail has not been shown on the proposed plans. Works to the building in order to satisfy, for example, fire, noise and energy requirements under the Building Regulations could cause an impact on the listed building. In the absence of the detail on what works would be required under the Building Regulations it cannot be known for sure that the proposal would not impact on the architectural or historic interest of this grade II listed building or the character or appearance of the Conservation Area.

There is also the case that due to the location of the site in an AQMA a ventilation extraction system would be required and therefore details would be needed of this at application stage to ensure the system would not cause harm to the listed building or the Conservation Area. Noise mitigation would also likely be required given the site's location in the town centre, on the one-way system and with a number of late-night establishments in close proximity and details of what noise mitigation measures would be required would be needed at application stage in order to assess the full impact of the proposal on the listed building and Conservation Area.

In summary, the proposal would result in an erosion of the original plan form of the building and there is a lack of supporting information submitted to demonstrate the impact of the proposal on the fabric of the listed building including any works that may be required under the Building Regulations and to mitigate poor air quality and noise impacts; such information would be needed in order to assess the impact of those works on this listed building and the King Street Conservation Area. On the basis of the submitted information therefore it must be concluded that the proposal would be harmful to the significance and architectural and historic interest of this grade II listed building contrary to Policies CS19 and CS20 (LPCS), saved Policies TC2 and TC3 (LPFR) and section 16 of the NPPF (2021).

Whether the proposal would provide acceptable living conditions for future occupiers of the flats

Flat sizes

The Technical housing standards – nationally described space standard (2015) (THS) states the minimum standards for dwelling sizes depending on the number of bedrooms, bed spaces (persons) and storeys.

With regards the size of the flats they would be as follows:

Flat no.	Internal floorspace (sq.m)	THS minimum standard for the type of	Does it meet the THS minimum standard?
----------	----------------------------	--------------------------------------	--

		accommodation (sq.m)	
1 - (1 bed, 1 person, 1 storey)	37	37	Yes
2 - 1 bed, 2 person, 1 storey)	50	50	Yes
3 - (1 bed, 1 person, 1 storey)	34.8	37	No – undersized by 2.2 sq. m
4 - (1 bed, 1 person, 1 storey)	34.2	37	No – undersized by 2.8 sq. m
5 - (1 bed, 2 person, 2 storey)	58.4	58	Yes
6 - (1 bed, 2 person, 1 storey)	61.5	50	Yes

As can be seen, two of the flats would be undersized – flats 3 & 4. Although it is annotated on the plans that both flats would be 37.1 sq. m they are not coming out at that when the plans are measured.

Private Amenity Space

SPG2 states that flats should provide a minimum of 10 sq. m private amenity space per flat. The site provides none but given its location in the town centre where there are public parks for future occupants to enjoy it is considered that on this occasion the lack of private amenity space would on balance be acceptable.

Layout/Light/Outlook

Some of the flats would have very poor levels of amenity in terms of layout and sunlight/daylight and outlook. This is set out below:

Flat 1 – Kitchen would have only one window looking out into the void area so would receive very poor sunlight/daylight and outlook

Flat 4 - Kitchen would have only one window looking out into the void area so would receive very poor sunlight/daylight and outlook

Flat 6 – The bedroom would have only one window looking out into the void area so would receive very poor sunlight/daylight and outlook. The kitchen/living/dining room would have no windows so would receive no sunlight/daylight or outlook.

Future occupiers of three of the six proposed flats would therefore experience extremely poor living conditions which would be harmful to their amenity.

Air Quality & Noise Impact

The site falls within the A226 One Way System AQMA area. An Air Quality Assessment is needed in order to assess the impact on future occupiers of the flats from the poor air quality and determine what mitigation would be needed to protect future occupiers. No such assessment has been submitted. As such it cannot be confirmed that future occupiers of the flats would not be harmed by poor air quality.

The site is situated on the A226 which is on the town's one way system and in the town centre close to a number of late-night establishments and with commercial premises underneath at ground floor. A Noise Impact Assessment is needed in order to determine the noise impact from traffic and all other potential noise sources (see GBC Environmental Protection comments for full details) to determine what mitigation would be needed to protect future occupiers. No such assessment has been submitted. Due to the potential noise that future occupiers could be exposed to it is considered that in the absence of a noise

impact assessment it cannot be confirmed that occupiers would not be harmed by noise.

In respect of the amenity of future occupiers therefore, due to two of the units being undersized and three of the units experiencing very poor sunlight, daylight and outlook the proposed flats would provide very poor living conditions which would be harmful to their amenity. Furthermore, the site is situated in the A226 One Way System Air Quality Management Area and on a busy road with high levels of traffic with possible other potential noise sources. No details have been submitted to demonstrate that future occupiers would not be impacted on from poor quality and noise. As such, it is considered that the proposal would provide a poor level of amenity and living conditions for future occupiers of the flats and the proposal is therefore contrary to Policy CS19 (LPCS) and paragraph 130 (f) of the NPPF (2021).

Impact on Ecology/Biodiversity

The application site falls within 6km of the Thames Estuary and Marshes Special Protection Area (SPA) classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and/or vulnerable in a European context, and also sites that form a critically important network for birds on migration. It is also listed as a Wetland of International Importance under the Ramsar Convention (Ramsar Site). Studies have shown marked declines in key bird species, particularly in areas that are busiest with recreational activity. Research conducted in 2011 found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar Site. The studies found that 75% of recreational visitors to the North Kent coast originate from within 6 km of the SPA boundary and Ramsar Site. The impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European Sites.

The Borough Council has mitigated out the impacts of this on each and every planning application for a new residential development of one or more units within the 6km zone since September 2015 by accepting a Strategic Access Mitigation and Monitoring Strategy (SAMMS) (tariff) payment (currently £314.05 per dwelling). This approach is approved by Natural England for all new residential developments.

For every planning application for a new dwelling (including new flats) which does not require any other contributions to be secured through a s106 legal agreement or unilateral undertaking the tariff has been secured through a contribution agreement.

The tariff has been accepted effectively in lieu of an Appropriate Assessment (AA) under the Habitat Regulations and thus avoiding the need to progress into a full AA.

However a more recent Court of Justice European Union (CJEU) ruling means that this approach is now no longer valid and although the mitigation measures (in the form of a tariff payment) will still need to be made the first stage will be a screening assessment as to whether the development either alone or in combination, is likely to have significant effects on a designated site without mitigation. The CJEU sees a distinction between “the plan or project” itself and “measures intended to avoid or reduce the harmful effects of a plan or project on a European site”. This means that mitigation measures, which are intended to avoid or reduce effects, should be assessed within the framework of an AA and cannot be taken into account at the screening stage.

This proposal would result in the net addition of 6 units and the applicant has not paid the required tariff (£314.05 x 6 = £1,884.30). The Local Planning Authority cannot therefore be satisfied that the proposal has put in place adequate measures to mitigate potential significant adverse effects on the Thames Estuary and Marshes SPA/Ramsar site. Therefore, the proposal in respect of ecology and biodiversity is contrary to Policy CS12 (LPCS) and Paragraphs 180 and 181 of the NPPF (2021).

Parking and Highway Safety

The application site has no off-street parking and this would remain the case with the proposal. The

existing use of the application building is two commercial (Class E) units at ground floor with a vacant restaurant at first floor level. The site is located in the town centre close to a public car park and public transport links. Overall, therefore it is considered the proposal would not have any impact with regards parking and highway safety and as such the proposal is in accordance with Policy CS11 (LPCS).

Other matters

Neighbouring Amenity

No external changes are currently proposed to the building. As such it is considered there would be no impact on the amenity of neighbouring properties and in this respect the proposal is compliant with Policy CS19 (LPCS).

Archaeology

The site is located in an Area of Archaeological Potential but there are no below groundworks therefore no impact on any archaeology and in this respect the proposal is compliant with saved Policy TC7 (LPFR).

Any Other Material Planning Considerations

None.

Balancing Exercise/Conclusion

The proposal is considered acceptable in respect of parking and highway safety, neighbouring amenity and archaeology. However, it has been found that the proposal would be unacceptable in respect of principle the impact on the architectural and historic interest of this grade II listed building in respect of an erosion of the plan form and insufficient information to assess the full impact of the proposal on the listed building and the Conservation Area including any works that may be required under the Building Regulations and air quality and noise mitigation. The proposal would also provide extremely poor living conditions for future occupiers due to two of the flats being undersized and some rooms in three of the flats receiving little or no natural sunlight, daylight or outlook and insufficient information being submitted to demonstrate the future occupiers would be protected from poor air quality and noise and disturbance. Lastly that the proposal does not put in place adequate measures to mitigate potential significant effects on the Thames Estuary and Marshes SPA/Ramsar site.

Paragraph 176 of the NPPF (2021) requires that great weight be given to conserving and enhancing designated heritage assets. Paragraph 180 (a) also states that if significant harm to biodiversity resulting from a development cannot be avoided, including being adequately mitigated, then planning permission should be refused. As stated in paragraph 181 of the NPPF (2021) SPA's and Ramsar sites should be given the same protection of habitats sites.

As set out above the weight of all the other considerations does not outweigh the harm identified and provides a clear reason for refusing permission. The proposed development is therefore contrary to Policies CS12, CS19 and CS20 (LPCS) and saved Policies TC2 and TC3 (LPFR).

Recommendation:

20230268 – Refusal
20230269 - Refusal

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Ms Rebecca Harrison	Team Leader:	Richard Hart
----------------------	---------------------	---------------------	---------------------

Signed:		Signed:	
Dated:	5th June 2023	Dated:	6th June 2023