



Delegated Report

Prior Approval Class MA

Application No:	20240262
Location:	Joynes House, New Road, Gravesend, Kent, DA11 0AJ
Description:	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the change of use of undercroft car park of existing commercial building (Use Class E) to 10 residential flats (Use Class C3).
Applicant:	Mr Greg Kuzdenyi, Joynes House Development Ltd
Site Visit:	24 April 2024

Procedural Issues

In determining a prior approval application, the Local Planning Authority (LPA) is not granting a planning application; it is simply deciding whether its prior approval is required in respect of the specified matters only. Consequently, the LPA is not able to take into account other considerations that it would be able to consider were it determining a planning application e.g. amenity space.

Proposal

This application is for determination as to whether prior approval for the change of use of the undercroft parking for the existing commercial building (Class E) to 10 C3 (dwellinghouses) is required and whether it is approved or refused. The determination is made in relation to the provisions of Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order (as amended).

By indicating that the development proposal complies with the relevant provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) the LPA is taking into account the information submitted with the application, material planning considerations raised within any representations received relevant to the Class MA assessment and any previous relevant applications. No information has been discovered revealing removal of permitted development rights, it is therefore understood that the property's permitted development rights are intact and there are no restrictive conditions or outstanding Enforcement notices covering the property.

Submitted Documents/Plans

- Application Form – dated 19 March 2024;
- Covering Letter – dated 19 March 2024;
- Planning Statement by Gemini Planning Service Ltd – dated March 2024;
- Supplementary Information – Residential Space Standards Statement;
- Supplementary Information – Transport Statement by Velocity Transport Planning Ltd – dated June 2023;

- Supplementary Information – Internal Daylight Assessment by T16 Design – dated May 2023;
- Drawing no. JH-C-00-0G-01-01 – IN3 – Site Location Plan and Block Plan;
- Drawing no. 001 – Rev. B – Proposed South and West Elevations;
- Drawing no. 001 – Rev. B – Annotated Proposed South and West Elevations;
- Drawing no. 002 – Rev. A – Proposed North and East Elevations;
- Drawing no. 002 – Rev. A – Annotated Proposed North and East Elevations;
- Drawing no. 003 – Rev. A – Sections;
- Drawing no. 004 – Rev. C – Proposed Lower Ground Floor Plan.
- ~~Drawing no. 004 – Rev. B – Proposed Lower Ground Floor Plan – SUPERSEDED.~~

Relevant Planning History

Reference	Description	Decision	Decision Date
20230612	Proposed conversion of undercroft car park to provide 10 no. flats, with associated ancillary residential communal space and plant room. Proposed cycle parking storage and the provision of private outdoor amenity space. Facade alterations and minor amendments to lower ground floor internal layout granted under application reference 20221183.	PERMITTED	07.12.2023
20231016	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use part-first, second and fourth floors from commercial floorspace to 30 residential units.	PRIOR APPROVAL GRANTED	24.11.2023
20230824	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use part-first, second and fourth floors from commercial floorspace to 28 residential units.	PRIOR APPROVAL GRANTED	27.09.2023
20230822	Application for non-material amendment to planning permission reference number 20221183 to allow amendments to elevation facades.	PERMITTED	25.08.2023
20221336	Application under Regulation 77 of the Conservation of Habitats and Species Regulations 2010 under references 20210974 - 20210962 - 20210973 - 20210958	APPROVAL OF DETAILS	22.06.2023
20221326	Application under Regulation 77 of the Conservation of Habitats and Species Regulations 2010 under reference 20221111	APPROVAL OF DETAILS	22.06.2023
20221183	**REVISED DESCRIPTION** Proposed external alterations to existing building	PERMITTED	03.05.2023

	facade including new windows, aluminium infill panels and infill glazing to lower ground floor. Relocation of existing entrance and lobby from ground floor to lower ground floor and minor amendments to internal layout of 2 no. ground floor residential units consented under reference 20210958, as amended by non-material amendment ref 20220391.		
20221111	Application for prior approval under Part 20 Class AA of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for upward extension of existing commercial building through the construction of 2 additional storey to provide 24no. flats along with necessary ancillary works.	PRIOR APPROVAL GRANTED	05.12.2022
20220799	Application for prior approval under Part 20 Class AA of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) for upward extension of existing commercial building through the construction of 2 additional storey to provide 24no. flats along with necessary ancillary works.	PRIOR APPROVAL REFUSED	23.09.2022
20220392	Application for non-material amendment to planning permission reference number 20210962 to allow minor amendments to the internal layout.	PERMITTED NON-MATERIAL AMENDMENT	20.04.2022
20220391	Application for non-material amendment to planning permission reference number 20210958 to allow minor amendments to the internal layout.	PERMITTED NON-MATERIAL AMENDMENT	20.04.2022
20220390	Application for non-material amendment to planning permission reference number 20210974 to allow minor amendments to the internal layout.	PERMITTED NON-MATERIAL AMENDMENT	20.04.2022
20210974	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use of Part Ground, First and Second Floors from Class E (previously Class B1(a)) (offices) to 26 residential units (Class C3 (dwellinghouses)).	PRIOR APPROVAL GRANTED	16.09.2021
20210973	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use of Part First, Second and Fourth	PRIOR APPROVAL GRANTED	16.09.2021

	Floors from Class E (previously Class B1(a)) (offices) to 22 residential units (Class C3 (dwellinghouses)).		
20210962	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use third floor from Class E (previously Class B1(a)) (offices) to 13 residential units (Class C3 (dwellinghouses)).	PRIOR APPROVAL GRANTED	16.09.2021
20210958	Application for a determination pursuant to Article 3, Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use of Part Ground Floor from Class E (previously Class B1(a)) (offices) to 4 residential units (Class C3 (dwellinghouses)).	PRIOR APPROVAL GRANTED	16.09.2021
TH2/71/82B1	Detailed plans of office block.	APPROVED	24.01.1973
TH/2/71/82B	Detailed plans of office block.	APPROVED	12.10.1972
TH2/71/82A	Outline application for the erection of office block of 51,280 sq.ft. and erection of dwellings.	CONDITIONAL PERMISSION	31.05.1972
TH2/71/112	Outline application for the erection of an office block, flats and houses on sites of 1, 2, 3, 4 New Road, 2A St. James' Road, St. James' Church and Darnley Road.	PERMISSION	21.12.1971

Consultations, Publicity and Representations

Internal Consultees

GBC Environmental Protection - As this is a Prior Approval application, only certain matters can be taken into consideration:

- *Noise* - A noise impact assessment (NIA) was submitted with an earlier prior approval application which highlighted traffic noise as the main noise source. Under Prior Approval, road traffic noise is not a consideration – only noise from commercial sources can be considered. In this respect, there is no objection to this application.

However, as the earlier NIA did not cover the conversion of the undercroft area for residential, the roadside gardens or communal amenity areas, the applicant is advised to still consider these areas in respect of noise levels. This is to ensure that in terms of living quality/amenity noise levels in accordance with BS8233:2014 are achieved both internally and in external amenity areas. In addition, consideration should also be given to the plant room to ensure that noise from this does not impact the proposed dwellings in the undercroft area or any dwellings on the floor above. The plant noise should be assessed in accordance with BS4142:2014.

- *Contamination* - As advised previously (20230612), due to the use of the undercroft area for car

parking, there could potentially be contamination from spilt fuel, leaking tanks etc. A watching brief condition is recommended.

To address these and other matters, the following conditions and informatives are recommended:

- *Code of Practice on Construction and Demolition* - Please apply as appropriate.
- *Watching Brief* - The applicant shall undertake a watching brief during construction in case any contamination issue is encountered. If during development any contamination is found, the local planning authority should be informed as soon as practical and the work shall not continue until written agreement is provided by the LPA as to the appropriate measures to be taken to resolve the matter and they are satisfied that those measures have been carried out.

Local Ward Councillors - No comment received.

Neighbouring properties

A notice was displayed on site 04 April 2024.

No representations were received as a result of the publication. The consultation period expired 26 April 2024.

Preliminary Matters

This application follows a major application (ref. 20230612), approved in 2023, for a similar development converting the undercroft parking area into 10no. flats with associated ancillary residential communal space and plant room.

A site visit was undertaken to ensure that the permission had not been implemented. On site works were underway for other permissions relating to the conversion of the upper floors, however the pneumatic drilling was not directly related to the approved major application. The agent confirmed in writing that the works to drill the concrete floor relate to drainage for the upper floor conversions. Therefore, based on this, it is not considered that the major application has been implemented.

Following the site visit, revised plans were submitted which increase the size of the plant room and divide the ancillary residential communal area into two rooms (social and homeworking). This is a differentiation between the approved plans (ref. 20230612) and this application.

Officer's Analysis

This application seeks determination pursuant to Article 3, Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change.

Assessment

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.

MA.1. (1) Development is not permitted by Class MA—		
(a)	unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;	Y
(b)	unless the use of the building fell within one or more of the classes specified in sub-	Y

	paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;	
<u>(c)</u>	if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;	Y
<u>(d)</u>	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;	N
<u>(e)</u>	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	N
<u>(f)</u>	if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or	N
<u>(g)</u>	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.	N/A

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; and
 - (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.

The following paragraphs will assess the relevant prior approval matters (NB paragraphs (h) is not applicable to the proposed development).

It is noted that according to paragraph W(10) of the GPDO, when determining a prior approval application, the Local Planning Authority must have regard to the National Planning Policy Framework (NPPF) (2023) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. Therefore, the following discussion will refer to the NPPF (2023) and not refer to local development plan policies.

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

Paragraph 115 of the NPPF (2023) sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The application site is located within the town centre and is in a sustainable location with good access to public transport links and public car parking.

A Transport Statement has been submitted with the application, which details that 80 secure cycle space will be provided. As such, due to the proximity to the town centre and to shops and amenities, the development would not result in significant additional vehicle movements, and the proposed bicycle parking would be appropriate in quantity and layout. Prior approval would not therefore be required in relation to transport impacts, as the development has no adverse impacts on highway safety and would be in line with paragraph 115 NPPF (2023).

(b) Contamination risks in relation to the building

The previous land use history of the area does not suggest that the site has previously been subject to contamination and the constraints associated with the site do not highlight any past land use such as industrial which may indicate contamination of the site. Given there are no proposed works that would result in excavation into previously undisturbed land, there would be limited risk. Therefore, no objection is raised in this regard, however the approval is subject to the following condition:

The applicant shall undertake a watching brief during construction in case any contamination issue is encountered. If during development any contamination is found, the local planning authority should be informed as soon as practical and the work shall not continue until written agreement is provided by the LPA as to the appropriate measures to be taken to resolve the matter and they are satisfied that those measures have been carried out.

(c) Flooding risks in relation to the building

The site is located in flood zone 1 which has a low probability of flooding. Given that the site is located within the lowest Flood Zone with an extremely low risk of flooding. Prior approval would not therefore be required in relation to flood risk.

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

Class MA applications only take into consideration commercial noise sources affecting potential new receivers, and does not include for traffic noise or pedestrians using New Road.

The application site is located immediately adjacent New Road and Darnley Road, both of which are busy roads in the town centre. The junction and traffic lights where Darnley Road meets New Road would also increase traffic noise volumes close to the proposed site. However no specific noise generation from commercial premises which will adversely impact on the amenity of future occupiers. Therefore, prior approval is not required in relation to commercial noise.

(e) Impacts on the character or sustainability of a conservation area

The application site is not within a conservation area. Therefore, it is considered that the proposed development would not be detrimental to the character or appearance of the adjacent conservation area.

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

Paragraph 129(c) of the NPPF (2023) sets out that, when considering applications for housing, Local Planning Authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

As can be seen on the accompanying floorplans and the supporting Internal Daylight Assessment future occupiers will receive a good provision of natural light. Each habitable room will be served by one window and the development would be in line with paragraph 129(c) and Policy CS19 of Gravesham's Local Plan Core Strategy (2014).

(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

The application site is located within the town centre and therefore not located within an area of heavy industry, waste management, storage or distribution. Therefore, there would be no adverse noise, odour or air quality impacts on future residents arising from industrial or traffic sources and the proposed development would be in line paragraphs 191 and 192 NPPF (2023).

(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 200657,

the impact on the local provision of the type of services lost

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

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

The building falls below the 18m height requirement and is therefore not considered a high-risk building by HSE Fire and Planning, as confirmed in the previous planning application ref. 20221183 and demonstrated in 'drawing no. 003 - rev. A'. Therefore, the development does not meet the requirement for a fire safety impact assessment.

Thames Estuary and Marshes Ramsar / Special Protection Area (SPA)

In addition to the criteria of Class MA, the proposed development is subject to Regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010 (as amended), which require the Local Planning Authority to take into account whether the proposal would, either alone or in combination, have likely significant effects on a European Site (SPA/SAC/Ramsar site). Regulation 73 (1) of the Habitat Regulations states: "It is a condition of any planning permission granted by a general development order... that development which is likely to have a significant effect on a European site... (either alone or in combination

with other plans or projects)... must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 75."

The proposed development is considered to have likely in-combination effects due to its recreational impacts. Thus, any successful application would need to satisfy the requirements of the Habitat Regulations and would require a financial contribution of £328.27 per residential unit to mitigate the adverse impacts.

An informative to this effect would be added to any approval. The informative would state the following;

It is a condition of any permission granted by a general development order that, in those cases where a development is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the development must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 73, of the Conservation of Habitats and Species Regulations 2010, which is expressly saved by Schedule 7 of the Conservation of Habitats and Species Regulations 2017. Pursuant to Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015, an application under Regulation 73 would therefore be required before development is begun.

Conclusion

The application meets the criteria as set out in Part 3 (Class MA) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in considering that criteria, the proposal is considered acceptable (subject to the conditions set out above) with regard to the transport and highways impacts, contamination risks, flooding risks, impacts of noise from commercial premises on future occupiers, impacts on the adjacent conservation area, the provision of adequate natural light and the impact on future occupiers of the introduction of a residential use in an important industrial area. On this basis, prior approval can be granted.

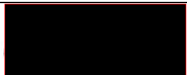
Paragraph W.13 of the GPDO states that prior approvals may be granted subject to conditions reasonably related to the subject matter of the prior approval. The following conditions are required:

- Watching Brief
- Cycle Storage

Recommendation

Prior Approval is Required and Approved

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Mr Ethan Bonthron	Team Leader:	Richard Hart
Signed:		Signed:	
Dated:	14 th May 2024	Dated:	16 th May 2024