

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20231246
Location	Unit C Imperial Retail Park Thames Way Gravesend
Proposal:	Application for a Lawful Development Certificate for the proposed removal and reconfiguration of the mezzanine floor.
Applicant:	Box+III Gravesend Limited
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form for a Lawful Development Certificate for a Proposed Use or Development;
 Drawing no. IRP-UC-SLP-001 Red/blue line site boundary plan;
 Drawing no. IRP-UC-BP-001 Block plan;
 Drawing no. URB UC [08] 01 06 Rev. D00 Existing layout;
 Drawing no. URB UC [08] 01 07 Rev. D00 Proposed layout;
 Letter from the agent dated 05 December 2023; and
 Email from the agent received 19 December 2023.

Property Type

The application property comprises of a non-food retail unit with a ground floor area of 928 square metres and a mezzanine floor area of 449 square metres. The unit is currently vacant but was previously occupied by Bensons For Beds. The existing mezzanine floor at the application site can only be used as a part non-food retail sales area and a part non-food retail stock area in line with the approved layout under planning permission reference 19930224.

It is noted that planning permission was recently granted for the change of use of the ground floor of the application property from non-food retail to the retail sale of food and ancillary non-food goods and the installation of plant (reference 20231078). That permission has not been implemented to date.

Relevant Planning History

Reference	Description	Decision	Decision Date
20231078	Change of use of ground floor from non-food retail to retail sale of food and ancillary non-food goods and installation of plant.	Permitted	18.01.2024
20200452	Part change of use of Unit C from fully Class A1 (Retail Use) of the Town and Country Planning (Use Classes) Order 1987, as amended, to Class A1 (Retail Use) and Class D2 (Gymnasium) following the subdivision of the	Permitted	21.07.2020

	Unit; reconfiguration of mezzanine floorspace within the subdivided unit.		
20200450	External alterations to Unit C to facilitate the subdivision of the retail unit into two units including removal of existing entrance canopy and installation of new shop fronts	Permitted	21.07.2020
19930224	Installation of mezzanine floor for part sales area and part store area.	Permitted	19.05.1993
19920124	Erection of seven Class B1 light industrial units with ancillary offices, one unit with Class B1 light industrial use or Class A1 non food retail use, and ancillary offices, one Class D2 ten pin bowling unit, and three Class A1 non food retail units, and provision of associated lorry and car parking spaces, landscaping, public riverside walkway, and public recreational amenity area.	Permitted	31.03.1992
19900359	Erection of 3 Class 1 non-food retail units, 1 Class D2 leisure unit, 1 Class A3 fast-food drive-through restaurant, associated car parking and service areas.	Permitted	26.02.1991

Officer Assessment

Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	No
Article 4 Direction	No
Permitted Development Rights Removed/Restricted	Yes

General Approach

This application is for a Lawful Development Certificate (LDC) and not for a planning permission and as such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The applicant is responsible for providing sufficient information to support the application and the proposal must be described with sufficient clarity and precision to enable the Local Planning Authority (LPA) to understand exactly what is involved. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The applicant has submitted a covering letter, email and various drawings illustrating and explaining the proposal, the details of which are set out in the Plans & Documents Section above.

The following statement, made in the covering letter, is highlighted;

The purpose of the proposed Certificate is to allow the Applicant to remove and reconfigure the existing mezzanine within Unit C.

There will be no increase in the level of floorspace, as both the existing and proposed mezzanine measure 449.2 sq. m in size; it merely changes its configuration as shown on the accompanying plans.

The following statement, made in the email, is highlighted;

Therefore, what we are proposing here, and have done elsewhere, is to apply for a Certificate of Lawful Development to confirm that it would be lawful to remove the mezzanine and re-instate it in an alternative arrangement at a future date. This would mean that once removed, it would be possible to reinstate the mezzanine within the same unit, in the configuration approved, at some point in the future. Although planning would still be required to install the floorspace in another unit at the Site, this essentially creates a fall-back position, whereby the principle of relocating the floorspace should be acceptable in planning terms, as planning would not be required to re-instate within Unit C. There is no guarantee that the Applicant will chose to relocate the floorspace in the future, rather this strategy simply seeks to ensure that this floorspace is not simply lost following its removal.

The proposed development would involve the removal and reconfiguration of the existing mezzanine floor to allow the installation of a new mezzanine floor (the same size as existing).

The applicant alleges that the proposed development would be lawful because it would not constitute development. The reasoning for this is that the works would be internal and would not result in an increase in the floorspace of the building. In this regard, the applicant refers to Section 55(2)(a) of the Town and Country Planning Act 1990 (as amended), Articles 44(1) and (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) and Section 49 of the Planning and Compulsory Purchase Act 2004 (as amended).

The applicant has also made reference to four planning/LDC applications in other LPA areas, where similar proposals have been approved.

Background

Planning permission was granted in March 1992, under reference 19920124, for the erection of the application property (as one of eleven units). Condition 7 of that permission reads as follows;

(vii) Notwithstanding the provisions of Section 55(2)(a) of the Town and Country Planning Act 1990, none of the units hereby permitted shall be altered or extended at any time by the construction of mezzanine floors (other than those shown on the approved drawings) or in any other way which will create a total gross floorspace in respect of each unit in excess of that indicated on the approved drawings, save with the prior permission in writing of the District Planning Authority.

This condition precludes the extension of alteration of the application property by the construction of mezzanine floors and has not been subject to any variation or removal. Therefore, condition 7 of planning permission 19920124 remains enforceable and the installation of a new or amended mezzanine floor at the application property would require planning permission.

It is noted that planning permission reference 19930224 was granted in May 1993 which allowed the construction of the existing mezzanine floor at the application property. The permission was subject to the following condition and reason;

(ii) The development shall take place only in strict accordance with the application and drawings hereby permitted.

(iii) That any amendments thereto, may be the subject of a separate application, which the District Planning Authority would wish to consider upon their merits, having regard to the car parking provision in the area.

This condition precludes the alteration of the approved mezzanine floor and has not been subject to any variation or removal. Therefore, condition 2 of planning permission 19930224 remains enforceable and the amendment of the existing mezzanine floor at the application property would require planning permission.

Would the proposal constitute operational development?

Section 55(2) of the Town and Country Planning Act 1990 (as amended) sets out the categories of work that do not amount to development, for which planning permission is required. These include internal alterations to a building (Section 55(2)(a)(i)).

However, pursuant to Section 49(1) of the Planning and Compulsory Purchase Act 2004 (as amended) development can include certain internal operations. These are specified by development order and include operations which have the effect of increasing the gross floor space of a building by a specific amount/percentage. Relevant to this application are Articles 44 (1) and (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) which specify that operations which have the effect of increasing the floor space of a building, used for the retail sale of goods (other than hot food) by more than 200 square metres, are development.

The applicant describes the proposed development as the removal of the existing mezzanine floor and highlights an intention to reconfigure the mezzanine's layout and reinstate it at a later, unspecified date. Therefore, the proposed works would involve two separate parts, firstly the removal of the existing mezzanine floor and secondly the installation of a new (albeit same sized but reconfigured) mezzanine floor. The current floor area of the building is 1377 square metres and it is used for the retail sale of goods (other than hot food). Once the existing mezzanine is removed, the total floor area of the building would be 928 square metres.

Because the new mezzanine floor would have a floor area of 449 square metres and would be installed separately to the removal of the existing mezzanine floor (at an unspecified date), these works would increase the floor area of the building (used for the retail sale of goods (other than hot food)) by an amount in excess of 200 square metres and as such, would constitute development for which planning permission would be required.

Furthermore, as set out in the section above, the installation of a new or amended mezzanine floor at the application property would be in breach of condition 7 of planning permission 19920124 and condition 2 of planning permission 19930224 and planning permission would be required in any event.

Consideration of the other applications referred to by the applicant

It is noted that a LDC application must be determined with reference to the facts of the specific case and therefore any reference to other applications would not be likely to significantly influence the decision making process. Notwithstanding this, the applicant has made reference to four applications;

- CH/22/0230 Granted LDC for the proposed reconfiguration of existing mezzanine at Unit 5, Orbital Retail Centre, Voyager Drive, Crannock
- CH/22/0278 Planning permission for the redistribution of existing mezzanine floorspace at Unit 3 and Unit 5 at Orbital Retail Centre, Voyager Drive, Crannock
- 23/00544/CLOPUD Granted LDC for the proposed reconfiguration of internal mezzanine floor and stairs at 14 Chelmer Village Retail Park, Chelmer Village Way, Springfield, Chelmsford, Essex
- 23/00987/FUL Planning permission for the removal of existing mezzanine floorspace from Unit E and construction of additional mezzanine floorspace in Unit B1 at Chelmer Village Retail Park, Chelmer Village Way, Springfield, Chelmsford, Essex

It is noted that the two LDC applications were submitted by the same agent and were described as reconfigurations of existing mezzanine floors, with no reference to the existing mezzanines being removed. Whereas the current application is described as the removal and reconfiguration of a mezzanine floor.

It is also noted that there were no conditions attached to the application properties in either of the above LDC cases, which precluded the construction or alteration of mezzanine floors.

Therefore, it is considered that the LDC applications referred to by the applicant are not directly comparable to the current proposal.

Both planning permissions are for the relocation of mezzanine floors from one retail unit to another and are not comparable to the current proposal.

Conclusion

The proposed development would increase the floor area of the building (used for the retail sale of goods (other than hot food)) by an amount in excess of 200 square metres and as such, would constitute development for which planning permission would be required. Furthermore, the installation of a new or amended mezzanine floor at the application property would be in breach of condition 7 of planning permission 19920124 and condition 2 of planning permission 19930224 and planning permission would be required.

The proposal would therefore not be lawful and pursuant to section 192(2) of the Town and Country Planning Act 1990 (as amended), a Certificate of Proposed Lawful Development/Use cannot be granted.

Recommendation: <u>Refuse</u> Lawful Development Certificate

Case Officer:	Kelly Joyce	Team Leader:	Richard Hart
Signed:	<i>K Joyce</i>	Signed:	<i>R Hart</i>
Dated:	30th January 2024	Dated:	31st January 2024