



Delegated Report

Planning Application

Planning Application No: 20231004

Location: 157 Milton Road Gravesend Kent

Description: Conversion of the property from a vacant restaurant to 3x1 bed flats and 3 studio flats.

Applicant: Mr Singh

Site Visit Date: 20 October 2023

Submitted Documents/Plans

- Application form;
- Drawing no. 001 Rev. A – Existing and Proposed Block Plans, Location Plan;
- Drawing no. 002 Rev. A – Existing Plans and Elevations;
- Drawing no. 003 Rev. A – Existing and Proposed Elevations;
- Drawing no. 003 Rev. – Proposed Plans and Elevations; and
- Heritage Statement.

Relevant Planning History

Reference	Description	Decision	Decision Date
20230268	Conversion of the property from a vacant restaurant to 6x1 bed flats.	Refused	06.06.2023
20230269	Application for Listed Building Consent for the conversion of the property from a vacant restaurant to 6x1 bed flats.	Refused	06.06.2023
19900146	Application for Listed Building Consent for the reconstruction of the balcony at first floor level on the front elevation.	Permitted	04.05.1990
19920051	Erection of an external extraction duct on the rear elevation of No. 158 Milton Road.	Permitted	03.04.1992

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 (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.

Other material considerations

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 (2023)

- 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

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

Room 3 should be a kitchen dining area and locate the shower ensuite in room 2.

Chimney stacks appear to be missing off the plans for rooms 9, 10 and 14 (latter shown on the proposed), Have they actually been removed? Needs checking.

Are the walls to room 21 being rebuilt to include a splay? If so, why?

Removing chimney stacks in rooms 21 & 24 would not be acceptable.

Unsure whether the entrance door location to flat 5 is building regs compliant as believe it requires a minimal 400mm threshold step in front of the door, which cannot open out over the step.

This leads onto the question of sound and fire mitigation and further information is required on how this will impact the fabric of the building.

May have to accept a compromise on sub dividing rooms to get ensuites but not removal of chimney stacks, and this will have to be dealt with by submission of details of reversible partitions.

GBC Environmental Protection

In order to address some of the comments made regarding the previous (refused) application, I would have hoped that the applicant would have at least attempted to address some of these and arranged for a Noise Impact Assessment or Sound Insulation assessment to have been undertaken and submitted with the revised application. The same applies for air quality mitigation. As the building is Listed this would have given both Environmental Protection and Conservation the opportunity to assess whether the proposed mitigation measures for both noise and air quality could be installed within the building to the satisfaction of both teams. Although there have been a few changes internally, the comments made regarding the previous (refused) application are generally re-iterated.

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 still some concerns with the stacking arrangements of the proposal. The bed area flat

3 is still 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 propose suitable mitigation measures to address the poor air quality and provide a suitable internal environment for the future residents of the flats/studios.

It is advised that as habitable rooms of the flats/studios 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 units 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. Please note, that the wording for a condition for air quality has been included even though the recommendation is that the mitigation scheme is submitted prior to determination – this is for ease of reference.

External Noise:

a) A noise impact assessment (including appropriate mitigation measures) 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 a scheme for air quality mitigation measures 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 received from:

- National Amenity Societies

Neighbouring properties

23 surrounding properties were consulted plus site and press notices – overall consultation expiry date was 10.11.2023 – 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 commercial units at ground floor and the 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.

This application is a re-submission of application reference 20230268 which was for conversion of the property from a vacant restaurant to 6x1 bed flats which was refused on 6 June 2023 on the following grounds:

1. The proposal would result in an erosion of the original plan form of the building which is very much a part of the significance and character of this listed building. Insufficient information has also been 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 of the Gravesham Local Plan Core Strategy (2014), saved Policies TC2 and TC3 of the Gravesham Local Plan First Review (1994) and section 16 of the National Planning Policy Framework (2021).

2. The proposal would result in extremely poor living conditions for future occupiers by virtue of two of the flats being undersized, some rooms in three of the flats receiving little or no natural sunlight, daylight or outlook and insufficient information to demonstrate that future occupiers would be protected from poor air quality and noise and disturbance. The proposal is therefore contrary to Policy CS19 of the Gravesham Local Plan Core Strategy (2014) and paragraph 130 (f) of the National Planning Policy Framework (2021).

3. The applicant has failed to provide any ecological evidence to inform a habitat regulations assessment to address the impact of the proposed development on the Thames Estuary and Marshes Ramsar site and Special Protection Area (SPA) or offered a financial contribution towards the identified mitigation measures to address the impact of the development on the SPA/Ramsar site. The proposal is therefore contrary to Policy CS12 of the Gravesham Local Plan Core Strategy (2014) which seeks to ensure that detrimental effects on the integrity of SPA/Ramsar sites are avoided, and also contrary to Paragraphs 180 and 181 of the National Planning Policy Framework (2021).

It therefore needs to be seen in this latest application whether these grounds of refusal have been resolved and also whether all other matters are acceptable or not.

It should be noted that there was also an accompanying Listed Building Consent which for proposed development (ref. 20230269) which was also refused but no re-submitted Listed Building Consent application has been submitted alongside this re-submitted planning application.

The principle considerations in the assessment of the application are as follows:

Housing Need (As of October 2023)

In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865, Lord Carnwath reemphasised that the National Planning Policy Framework is only a material consideration in planning decisions and that that planning applications should be determined in accordance with the development plan. Paragraph 12 of the NPPF expressly states that the starting point for decision-making is the development plan. Lord Carnwath as part of the Supreme Court decision stated,

“It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than "guidance" and as such a "material consideration" for the purposes of section 70(2) of the 1990 Act... It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.”

It is a matter of law that all planning applications need to be considered in accordance with the legislation and relevant policy that applies at the point a decision is taken. The Council published a revised 5 year housing land supply statement in March 2023, it demonstrates that based on data up for the period 2022-2027, the Council can only demonstrate a land supply of 2.9 years.

Given the Council's current inability to demonstrate a 5-year housing land supply, and as the delivery of housing was substantially below (less than 75%) that required by the Housing Delivery Test, the housing delivery element of Gravesham's Local Plan Core Strategy (LPCS) (2014) Policy CS02 must be regarded to be out of date, as required by the Paragraph 11(d) of the National Planning Policy Framework (NPPF) (2023). 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 7 (rather than those in development plans) relating to any of the following:

- Habitats sites (and those sites listed in NPPF paragraph 182)
- 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 68)
- 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 125(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.

The proposed development for a net increase of 6 residential units would offer a modest contribution towards meeting this local need and, accordingly, officers considers that this should be accorded appropriate weight in support of the application. However, this has to be balanced against other requirements of the Development Plan and NPPF (2023) which requires new development to contribute positively to the overall quality of the area, be visually attractive, sympathetic to local character and create acceptable amenity for future occupiers.

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 is support for the principle of the development but all of the 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

This matter related to ground of refusal no. 1 of previous application ref. 20230268 and the ground of refusal of accompanying Listed Building Consent ref. 20230269.

The application building is grade II listed and situated in the King Street Conservation Area.

A Heritage Statement had been submitted with planning and listed building consent application refs. 20230268 and 20230269 but it was lacking in detail and did not contain the level of detail that a Heritage Statement should. There was no information regarding the impact the proposal would have had on the fabric of the building and recorded 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 that has been submitted with this application is much more detailed than the previous Heritage Statement and provides a detailed assessment on the levels of significance of the building and the impact the proposal would have in respect of the conversion to flats alone. It classifies no. 157 as being of high significance and states that despite the ground floor having been altered with modern ground floor shopfronts c.1952, the upper levels of the elevation are of high architectural value. It advises that whilst some changes have altered the interior (with some rooms more than others) the overall retention of interior features and layout of interest is reasonable. It states that the incongruous changes which have been carried out at various points throughout the 20th century present opportunities for change and improvement and explains that sub-division has been kept to a minimum but where this or the removal of existing partitions is required, it has been informed by the fabric and layout assessment in terms of the levels of significance of the building so as to be limited to rooms and fabric of lesser significance and/or areas already impacted by previous works.

In a comparison of the previous scheme and the proposed scheme it can be seen there are improvements in that there would now be much less sub-division of the original part of the building and it is no longer proposed to remove part of walls that were previously proposed to be removed. There are also some benefits to some of the proposed alterations as it is proposed to remove the existing dividing wall between bedrooms 1 and 2 at second floor level. This can be seen from a comparison of the existing, previously proposed and proposed floor plans:

Existing:



Previous proposed plans in application ref. 20230268:



Current proposed plans:



The majority of the proposed sub-division would now relate only to the early 20th century extension on the rear of the building which there is considered more flexibility for such alterations as it does not relate to the original mid-nineteenth century front part of the building.

In the original front part of the building which forms the main special interest of this listed building and is of the greatest significance, there would still be sub-division of four of the rear rooms across first and second floor levels (the 3 store rooms and the rear room of the restaurant kitchen) into shower rooms and kitchens as numbered rooms 3, 9, 14 & 21 in the Heritage Statement as shown below:



The levels of significance for these rooms are set out as follows in the Heritage Statement:

3. Store – Part of the original early/mid-19th century development of no.158.

- a. The room retains its original skirting, door, and window.
- b. The marble fire surround has been removed from the chimney breast and placed inside the opening of the breast.
- c. Floorboards appear to be original.

The room is of high significance.

9. Restaurant Kitchen – rear room to no.157

- a. This room retains cornice work which is probably contemporary with the building's construction and contributes to the significance of the building.
- b. The dado rail is likely to be historic.
- c. The window is original and the architrave to opening leading from room 8.

The room is of medium to high significance.

14. Store – rear room to no.158

- a. This room has been significantly adapted post construction.
- b. The window is modern and the room has a modern dropped ceiling.
- c. The doorway to the room originally led from the hallway now room 12.

The area is of low significance.

21. Store – rear room to no.158.

- a. This room retains its original windows; fire surround; and door.
- b. The cornice to room may be part of the early/mid- 20th century work but could have been installed later.
- c. A cupboard formed in the right hand side alcove is probably contemporary with the date of the building.

The room is of medium significance.

In the Heritage Statement it is stated:

The proposed addition of partition walls to form bathrooms and kitchens to the proposed flats 1, 3, 4 and 5 have been dictated by the existing wall layout, presence (or lack) of joinery and existing window layouts.

The sub-division of four rooms in the original part of the building to form shower rooms and kitchens would still erode the original plan form of the building however, the Conservation Officer raises no specific objection to these rooms being sub-divided advising that there may have to be some compromise on sub dividing rooms in order to provide ensembles for the flats. The Conservation Officer does raise concerns about removal of the chimney stacks in the store (room 21) and bedroom 1 (room 24) at second floor level. The Conservation Officer also highlights the lack of information on sound and fire mitigation and that further information is needed in regard to this and how it will impact on the fabric of the listed building.

There is no mention of extraction for the kitchens and shower rooms and the impact this would have on the fabric of this listed building.

Furthermore, it is still the case that no information has been given in regard the works that would be required to the building under Building Regulations or to mitigate noise impact or poor air quality. In previous application refs. 20230268 & 20230269 this information was not provided, and it has still not been provided in this re-submitted planning application. 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 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 works required could be assessed for their impact on the listed building. Works to the building in order to satisfy, for example, fire, noise and energy requirements under the Building Regulations could cause a harmful impact on the listed building and also the Conservation Area. In the absence of the detail on what works would be required under the Building Regulations it cannot be known 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.

It is also the case that the site is located in the A226 One-Way System AQMA and 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. In previous application ref. 20230268 GBC Environmental Health advised that 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 and that a Noise Impact Assessment is also needed in order to determine the noise impact from traffic and all other potential noise sources and determine what mitigation would be needed. These reports were not submitted with application refs. 20230268 & 20230269 and they have still not been submitted with this planning application. GBC Environmental Protection comment on this application that they had hoped that in order to address their comments on the previous refused application, the applicant would have at least attempted to address their comments and arranged for a Noise Impact Assessment and Air Quality Assessment to have been undertaken and submitted with this revised application. They advise that as the building is listed this would have given both GBC Environmental Protection and Conservation the opportunity to assess whether the proposed mitigation measures for both noise and air quality could be installed within the building to the satisfaction of both teams. They state that their comments on the previous application are reiterated.

Full details of any works required to protect future occupiers from noise impact and poor air quality are needed at application stage in order to be able to assess the impact of any works required and ensure there would be no harm caused to the listed building and Conservation Area. In the absence of the detail on what mitigation works would be required to protect future occupiers from noise impact and poor air quality, it cannot be known 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.

In summary, this application is supported by a good quality Heritage Statement which thoroughly assesses the significance of the listed building and discusses how the proposal would impact on it. There is less sub-division than before and some benefits in respect of the existing modern dividing wall between bedrooms 1 and 2 at second floor level would be removed. However, it is still the case that there are elements of the proposal that are unacceptable. There is the removal of chimney breasts and a lack of information with regards extraction for kitchens and shower rooms and the impact this would have on the fabric of the listed building. Information has still not been submitted in respect of demonstrating the impact of the proposal on the fabric of the listed building or Conservation Area through any works that may be required under the

Building Regulations and to mitigate poor air quality and noise impacts; such information is needed at application stage 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 still 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 (2023). In this regard ground of refusal no. 1 of previous application refs. 20230268 and 20230269 have not been resolved.

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 accommodation (sq.m)	Does it meet the THS minimum standard?
1 (1 bed, 1 person, 1 storey)	37	37 (as has a shower room)	Y
2 (1 bed, 2 person, 1 storey)	50	50	Y
3 (1 bed, 1 person, 1 storey)	34.8	37 (as has a shower room)	N
4 (1 bed, 1 person, 1 storey)	34.6	37 (as has a shower room)	N
5 (1 bed, 2 person, 2 storey)	58.8	58	Y
6 (1 bed, 1 person, 1 storey)	61.1	39 (as has a bathroom)	Y

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 37.3 sq. m and 37.1 sq. m respectively they do not measure as that.

Layout/Light/Outlook

In previous application ref. 20230268 & 20230269 some of the flats would have had very poor levels of amenity in terms of layout and sunlight/daylight and outlook. The issues were as follows with a note in red as to whether this issue has been resolved or not:

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

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

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. **The bedroom has been moved and would now have two windows serving it, therefore that issue has been resolved. The kitchen/living/dining room would have new windows inserted (three in the west elevation and two in the east elevation) so it would receive a good amount of natural light and ventilation; this issue has therefore been resolved.**

One of the previous issues has therefore been resolved but the issue still remains with the kitchens of flats 1 and 4 having poor sunlight/daylight and outlook. Future occupiers of two of the six proposed flats would therefore experience poor living conditions which would be harmful to their amenity.

Air Quality & Noise Impact

The site falls within the A226 One Way System AQMA and is on the A226 one way system. In previous application ref. 20230268 Environmental Health advised that 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. Also that a Noise Impact Assessment is needed in order to determine the noise impact given that 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 and determine what mitigation would be needed. No such reports were submitted with the application and they have still not been submitted with this application.

GBC Environmental Protection comment on this current application that they had hoped that in order to address their comments on the previous refused application ref. 20230268, the applicant would have at least attempted to address their comments and arranged for a Noise Impact Assessment and Air Quality Assessment to have been undertaken and submitted with this revised application. They therefore state that their comments on the previous application are reiterated.

In the absence of noise and air quality reports to assess the impact on future occupiers from noise impact and poor air quality and what mitigation would be needed to protect future occupiers, it cannot be confirmed that future occupiers of the flats would not be harmed by noise and poor air quality.

In respect of the amenity of future occupiers therefore, due to two of the units still being undersized and two of the units still experiencing 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. Details have still not been submitted to demonstrate that future occupiers would not be impacted on from poor air 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 still therefore contrary to Policy CS19 (LPCS) and paragraph 130 (f) of the NPPF (2023). In this regard ground of refusal no. 2 of previous application ref. 20230268 has not been resolved.

Neighbouring Amenity

There are three new windows proposed in the west elevation and two in the east elevation at second floor level in order that the kitchen/living/dining room for flat no. 6 would have some windows.

Due to the location of the proposed windows and the orientation of them to the adjacent buildings, St John's Church to the west and no. 146 Milton Road, there would be no overlooking to these buildings and no additional impact over what currently exists between the existing windows in the side elevations of the building at other levels. Therefore, no impact on neighbouring amenity and in this regard the proposal would be compliant with Policy CS19 (LPCS).

Impact on Ecology/Biodiversity

This matter related to ground of refusal no. 3 of previous application ref. 20230268 as the applicant had not paid the required SAMMS tariff.

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 six units and the applicant has still 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 (2023). In this regard ground of refusal no. 3 of previous application ref. 20230268 has not been resolved.

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).

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 & Recommendation

The proposal is considered acceptable in respect of neighbouring amenity, parking and highway safety and archaeology. However, it has been found that the proposal would still be unacceptable in respect of the impact on the architectural and historic interest of this grade II listed building in respect of the removal of some features 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, to provide mitigation for poor air quality and noise impact and for kitchen and bathroom ventilation. The proposal would also provide poor living conditions for future occupiers due to two of the flats being undersized and the kitchens in two of the flats receiving little natural sunlight, daylight and very poor outlook and insufficient information being submitted to demonstrate that future occupiers would be protected from poor air quality and noise and disturbance. Lastly the proposal has still 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 (2023) 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 (2023) 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: Refusal

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

Case Officer:	Ms Rebecca Harrison	Team Leader:	Miss Faye Hobbs
Signed:	<i>Rebecca Harrison</i>	Signed:	
Dated:	1 December 2023	Dated:	05 December 2023