

Application: 20230372
Your Reference: 23/00429/COU

TOWN AND COUNTRY PLANNING ACTS

TOWN AND COUNTRY PLANNING GENERAL REGULATIONS 1992

NO OBJECTION TO GRANT OF PERMISSION TO DEVELOP LAND
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To: **Dartford Borough Council**
Civic Centre
Home Gardens
Dartford
Kent
DA1 1DR

TAKE NOTICE that the **GRAVESHAM BOROUGH COUNCIL**, the Local Planning Authority under the Town and Country Planning Acts, has **NO OBJECTION** for development of land situate

at **Units U025; U026; MSU06; U028B/29; U030; U031-32; U014; U015; EVU06; And EVU03**
Upper Rose Gallery And Wintergarden
Bluewater
Greenhithe
Kent

and being **Dartford Consultation - Change of use of units U025; U026; MSU06; U028B/29; U030; U031-32; U014; U015; EVU06; and EVU03 from Use Class E(a) to provide hybrid leisure and restaurant, bar and dining type uses (Sui Generis).**

Referred to in your application dated 13 April 2023.

GRAVESHAM BOROUGH COUNCIL HOWEVER MAKES THE FOLLOWING COMMENTS:-

1 Thank you for consulting Gravesham Borough Council on the above planning application. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 this stands to be determined in accordance with the development plan unless material considerations indicate otherwise.

In this instance, the adopted development plan comprises the Dartford LDF Core Strategy (2011) and the Dartford Development Policies Plan (2017). The most relevant policies therein would appear to be CS4: Ebbsfleet to Stone Priority Area; CS 12: Network of Shopping Centres; and DP14: Retail and Town Centre Development.

Essentially, these recognise the specific role of Bluewater as a regional shopping and leisure destination, that has an inevitable need to evolve over time both to maintain its position and to maintain its distinction from, and not compete directly with, the traditional town centres of Dartford and Gravesend.

Policy CS4(f) also places Bluewater in the context of the broader spatial strategy for Dartford, in that the ambition is that it should become more integrated with the surrounding urban area over time, with any wider range of uses expected to provide synergies with development at Ebbsfleet and not compete with neighbouring town centres.

Policy CS12(5)(d) requires proposals exceeding a certain threshold to be accompanied by a 'retail assessment' carried out in consultation with neighbouring authorities, taking into account the likely impact of the scheme on neighbouring town centres and 'regional considerations'. Neither of the terms 'retail assessment' or 'regional considerations' appear to be explicitly defined.

As the emerging Dartford Local Plan to 2037 has reached the Regulation 19 stage and is at examination, policies contained therein can be accorded weight in accordance with the caveats set out in paragraph 48 of the National Planning Policy Framework (NPPF, 2021).

Policy M22: Bluewater is therefore relevant in this respect, with M22(3)(b) requiring the application of both the sequential and impact tests in the case of retail or leisure developments involving over 2,500 m² floorspace. As a change of use constitutes 'development' this requirement would therefore apply.

Other material considerations include policy as set out in the NPPF (2021), particularly at paragraphs 86 to 91, and associated Planning Practice Guidance (PPG).

The applicant has indicated that the proposal involves the change of use of 9,746 m² floorspace within the Rose Gallery/Wintergarden malls from largely Class E(a) retail to form 4 new units accommodating Sui Generis leisure/food and drink uses.

The amalgamation and reconfiguration of the existing units would result in the loss of 3,153 m² floorspace, with the new units containing 2,713m² floorspace (Unit 1); 1,680m² (Unit 2); 1,157m² (Unit 3); and 1,043m²(Unit 4) respectively.

No tenants or precise uses are identified for each unit, although Appendix 2 sets out a list of potential leisure operators. Hours of opening would be 9.00am to 0.30am, 7 days per week, including Sundays and Bank Holidays.

The Planning and Leisure Statement indicates that existing leisure floorspace (including the Glow Plaza, former events and exhibition centre) at Bluewater accounts for around 12,000m² floorspace.

The resulting total leisure/food and beverage floorspace because of the application would be in the order of 18,500m².

To give an idea of the scale of the units being provided, the largest unit at 2,713m² would be significantly bigger than a 12-badminton court sports hall (60m x 34.5m = 1,733m²), whilst the smallest unit at 1,043m² would be bigger than a 6 badminton court sports hall (34.5m x 27m = 931.5m²).

A considerable amount of existing retail floorspace at Bluewater is currently vacant (17.6%) due to changing patterns of shopping and the growth of e-commerce. This is partly because of the Covid pandemic but also blamed on the impact of business rates on traditional retailers. A need to diversify the centre's offer and to make better use of available space, whilst remaining competitive with similar regional centres, has therefore been identified.

The Planning and Leisure Statement accompanying the application refers to the earlier permission granted to extend significantly (+30,000m² lettable floorspace) the centre at the West Village and to form several Major Space Units (MSUs) through reconfiguration under application reference DA/16/01207/OUT.

Whilst some of the permitted development has already been implemented, the statement suggests that this is now time expired, and that the extension will now not be taken forward given lack of demand.

The planning history of Bluewater is complex and there is no need to set it out within these comments, although it is important to note that there are several previous permissions allowing either the introduction of leisure uses and/or conversion of existing space to leisure type uses. Whilst Gravesham Borough Council has no objection in principle to the current proposal, it is requested that the following points be addressed, both in terms of clarification and to ensure that the application is policy compliant:

1. Can Dartford Borough Council please confirm that the permission for the extension at West Village under DA/16/01207/OUT is time expired? This is important because the retail impact assessment for Ebbsfleet Central East under EDC/22/0168 appears to include an extant commitment for Bluewater of 16,764m² comparison and 200m² convenience goods floorspace. You will also be aware that Gravesham is currently dealing with an application under GR/2022/1064 for a major development at Northfleet Harbourside that includes a retail component.

2. The current planning application for Ebbsfleet Central East under EDC/22/0168 appears to be generally compliant with both the Dartford and Gravesham local plans, which presuppose that a district level centre will be delivered there including a retail and leisure component. The Development Schedule attached to the application indicates that the leisure component could be significant, within a wide range. Given policy CS4 requires the evolution of Bluewater to provide synergies with the development of Ebbsfleet, are there any implications arising from the current proposals in terms of the delivery and/or mix of uses that are likely to come forward at Ebbsfleet Central East?

3. Policy requires that the proposal is subjected to both sequential and impact testing. In terms of the sequential test, it is the applicant's proposal that forms the basis upon which alternative sites stand to be assessed, with only a relatively minor allowance for flexibility in terms of scale and/or the ability to disaggregate. The Planning and Leisure Statement assesses the suitability of 11 sites in Gravesham within table 3, with the results set out in Appendix 5. In general terms, the conclusion reached on these sites is that they are either unsuitable, unavailable or would not be available to be up and operational within the 12 months timeframe required by the applicant. In addition, alternative sites would not achieve the applicant's primary objectives in terms of the evolution and continued success of the Bluewater regional shopping centre. In terms of the Gravesham sites, the sequential assessment is accepted.

4. Gravesham Borough Council does however have concerns over the way in which the applicant has sought to address the impact test. On this, the Planning and Leisure Statement says at paragraphs 7.8 - 7.9:

7.8 In the context of Policy CS125d and paragraph 90 of the NPPF, the proposed development is acceptable in terms of impact because the proposals are not compatible for a town centre location. The proposed uses of this nature would not locate in a town centre location due to their specific requirements such as large floorplates and extensive car parking. As such, no trade will be diverted away from Dartford Town Centre and therefore no impact will arise from the development in terms of impact on town centre investment and vitality and viability.

7.9 The proposed leisure/Sui Generis uses are highly unlikely to open in local town centres and require major City Centres or regional shopping centre locations specifically where there is a current lack of provision (such as the South-East). The uses would complement the offer at Bluewater and would not compete with the likes of Dartford Town Centre which have their own local provision. There is no provision currently made for this uses in the Borough and so the proposals will therefore not compete with the existing leisure offer. As set out in the Council's 2021 Retail and Leisure Study there is a lack of some leisure facilities locally, with paragraph 11.76 for instance explaining that there are no tenpin bowling venues for residents in Dartford Borough. Bluewater would be ideally placed to meet this gap in provision.

Gravesham's concern here is that the above does not constitute an impact test rather a simple restating of the sequential test - i.e. that uses of this type have to locate at centres like Bluewater because they wouldn't locate in any of the surrounding traditional town centres.

This does not mean that leisure trade would not be diverted from those centres because of the expansion of leisure uses at Bluewater. It is the spend and not the type of venue that is important in this respect, given the population within the catchment will only have a limited amount of

disposable income to support a range of leisure facilities which in economic terms would be close substitutes.

What we need to understand therefore is what sort of level of spend may be diverted from neighbouring town centres within the identified catchment; whether this has any implications in terms of the existing leisure offer (with many traditional town centre pubs and restaurants struggling); and/or whether this could affect those centre's own aspirations to diversify and improve their offer.

It is interesting, for example, that the applicant refers to the possibility of attracting a Ten Pin Bowling operator to Bluewater but no information is provided on whether any of the converted units would be physically capable of accommodating such a use given its particular requirements and impact on adjoining uses.

Further, the Dartford Retail and Leisure Study (2021) prepared by Lambert Smith Hampton indicates that the main area where growth is likely to occur is in the food and beverage sector, where Dartford Town Centre is underperforming and where potential is identified to improve its offer. Ebbsfleet Central East is also likely to meet a proportion of increased demand to the west of the borough, as is Gravesend Town Centre.

Gravesham would therefore suggest that Dartford ask its own retail consultants to review the application and provide an independent assessment of the impact of the proposals against policy, also having regard to the cumulative in-combination impact with the proposals that are coming forward for Ebbsfleet Central East and other extant permissions within the catchment.

Whilst Gravesham accepts that assessing leisure impact is difficult compared to retail, where methodologies are more established, this has been done elsewhere in relation to regional centres. On this, attention is drawn to the current (albeit larger mixed-use) proposals for the Meadowhall, Sheffield centre and the type of quantitative and qualitative assessment undertaken there by CPW Planning on behalf of the Council - see <https://planningapps.sheffield.gov.uk/online-applications/applicationDetails.do?keyVal=QIWPFBNY0NH00&activeTab=summary>

5. The application as submitted is for Sui Generis uses, which are capable of being quite wide ranging in terms of the form of leisure offer that could be delivered. Notwithstanding the range of potential operators identified in Appendix 2 to the Planning and Leisure Statement, Sui Generis uses could include nightclubs, dance halls, venues for live music, drinking establishments, bingo halls, amusement arcades, e-gaming venues or amusement arcades/gambling places. Is it intended that the range of acceptable Sui Generis uses be limited by condition and what are they?

Again, in terms of the Meadowhall example provided above, the development description sub-divides floorspace within different categories of the E Use Class and Sui Generis to provide greater certainty over what is proposed. An associated reason for asking this is that the type of uses set out in Appendix 2 are unlikely to wish to remain open to 0.30 hours, 7 days a week so it is assumed that alternative type uses must be being contemplated.

6. Part of the case the applicant is making in terms of the sequential test is that neighbouring traditional town centres could not accommodate the scale unit type to be provided at Bluewater. However, if they were to be subsequently sub-divided, they may compete more directly with the offer capable of being delivered in those alternative locations. It is noted that the permission granted for the conversion of the Glow venue under DA/16/00037 included conditions 5 and 6 that prevented subdivision and/or use other than as single planning units. This was to ensure that the type of use provided was commensurate with the role of Bluewater and the spatial strategy implicit within the local plan. Will similar conditions be applied here?

7. It is noted the applicant makes the point at paragraphs 7.3 and 2.22 - 2.25 of the Planning and Leisure Statement (March 2022) that some of the proposed uses would be broadly like others within the E Use Class and that, if they did, change of use from retail would not be required.

It is suggested that it is only because they intend to incorporate other uses (such as sale of food and beverages for consumption of the premises) that the uses become sui generis, requiring planning permission.

However, if this is intended to be a 'fall back' position, the prospect of this option being taken up must be realistic and not merely theoretical - see *Mansell v Tonbridge And Malling Borough Council* [2017] EWCA Civ 1314.

Whilst such considerations are fact sensitive and a matter of planning judgement, there is so little detail of potential operators or how the proposed units might be occupied under the E Use Class, in a similar way to what is proposed under Sui Generis uses, it is difficult to conclude whether such an option would be realistic.

8. Finally, whilst the applicant is here applying to change use from Class E to a range of flexible Sui Generis uses, if it is correct to say that similar uses could be introduced within the existing Use Class, what is to prevent the applicant from subsequently changing a far greater quantum of floorspace to such uses on an incremental basis? Given this could fundamentally change the character and role of Bluewater, have the implications of this been considered and whether it would be justified in planning terms to use any permission granted pursuant to this application to impose controls via conditions or a s.106 agreement? This might be within the context of an agreed masterplan for the centre which allowed Bluewater sufficient flexibility to evolve over time but in a structured way, that would not bring it into conflict with neighbouring traditional town centres and would appear to be consistent with the objective of Policy CS4(f). Gravesham would be prepared to engage in this process, through the duty to co-operate should Dartford wish to resurrect the former Strategic Retail Planning Group.

As noted above, Gravesham Borough Council does not object to the proposal in principle. However, this is caveated by the need for further information needing to be made available to ensure that the proposal is policy compliant and that it will not have a significant adverse impact on neighbouring town centres such as Gravesend Town Centre and their own ability to evolve in the face of a changing retail and leisure environment, which is not unique to regional centres such as Bluewater.

In stating this, the Council is also aware that the proposal will bring with it benefits in terms of employment in the local area and the alternative use would preclude a change in the Bluewater retail offer, which might bring it more into direct competition with neighbouring town centres should vacant units be taken up by retailers targeting similar sections of the market.

Officers would be grateful if you could keep Gravesham informed of any further provided by the applicant to justify the proposal, particularly in relation to deficiencies within the impact assessment.

Dated this 4th day of May 2023

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