



Delegated Report

Planning Application

Planning Application No: 20230897

Location: 38 Windmill Street Gravesend Kent

Description: Conversion of the property into 2 x 1-bed and 1 x 2-bed residential flats.

Applicant: Mr Muzaffer Celik

Site Visit Date: 22 September 2023

Submitted Documents/Plans

- Covering Letter;
- Application form;
- Drawing no. 005 Rev. A – Proposed Elevations;
- Drawing no. 003 Rev. A – Existing Elevations;
- Drawing no. 001 Rev. A – Block Plan and Location Plan;
- Drawing no. 002 Rev. B – Existing Floor Plans;
- Drawing no. 002 Rev. A Proposed Floor Plans;
- Planning & Heritage Statement;
- Noise Impact Assessment by Noise Air Acoustics & Air - Report Ref. P6595-R1-V1; and
- Air Quality Assessment by Noise Air Acoustics & Air Quality – Report Ref: P6595-R2-V1.

Relevant Planning History

Reference	Description	Decision	Decision Date
20230249	Conversion of the property into 2 x 1-bed and 1 x 2-bed residential flats.	Refused	10.05.2023
19880262	Application for listed building consent for external alterations and refurbishment.	Withdrawn	20.02.1989
19840877	Erection of single storey front extension to form garage fronting Lord Street	Refused	31.01.1985
19840878	Application for Listed Building Consent for the erection of single storey front extension to form garage fronting lord street	Refused	31.01.1985
19820221	Application for Listed Building Consent for alterations in connection with the reconstruction and extension of existing covered way at the rear internal alterations and reinstatement of balustrading on the Windmill St. frontage including the provision of a brick built planter.	Permitted	17.05.1982
19820097	Reconstruction and extension of existing covered area at the rear	Permitted	17.05.1982
19490611	Alterations and additions	Permitted	29.10.1949

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 architect 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);
- Upper Windmill Street Conservation Area Character Appraisal (2009)
- Management Plan Gravesend Town Centre Conservation Areas (2009)

Consultations, Publicity and Representations

Consultees

GBC Conservation Officer

I've reviewed the submissions, which are still lacking the necessary information to assess the impact of the proposals on the historic fabric of the listed building. The heritage statement makes no attempt to describe the internal alteration proposed to walls and partitions and there is no analysis of original and later alterations to the building. It is therefore not possible to determine the application due to the lack of supporting information. Based on the plans of the existing and proposed internal layout, there are alterations to the fabric, which cause harm to the significance of the listed building by altering the original plan form. On this basis the proposals are contrary to local and national planning policy whilst the supporting information is deficient in allowing a full assessment of the proposals.

GBC Environmental Protection

The application details, Noise Impact Assessment (NIA) and Air Quality Assessment (AQA) have been reviewed.

With regards to the NIA, the methodology and findings are accepted. Noise from the surrounding roads and also the Parrock Street car park at the rear have been reviewed. The report concludes that internal noise levels as given in BS8233:2014 will be exceeded with standard glazing. Glazing specifications are given in section 6.1. Ventilation is also recommended so that suitable ventilation can be provided when windows are kept closed to keep out the traffic noise. Passive ventilation is appropriate for the rear rooms but mechanical ventilation is recommended for the rooms fronting the road network. The submitted Heritage Report indicates that the Building is Grade II Listed and within a Conservation Area, so it is important that the Conservation Officer is happy to accept the proposed noise mitigation measures.

The methodology of the AQA is accepted and both construction and operations phase impact have been assessed. With regards to construction, mitigation to minimise the impact of dust associated with the construction and alterations of the building on nearby premises is recommended. The mitigation is proposed in section 6 of the AQA and follows the relevant IAQM guidelines.

The site falls partially within the boundary of the Gravesend One Way system AQMA. As such, the impact of air quality on future occupants has been investigated. The AQA concludes that monitored levels of NO₂ close to the site have been below the Air Quality Objectives so there are no concerns. However, as the site falls within the boundary of an existing AQMA, air quality is a consideration. Mechanical Ventilation has been proposed for noise reasons, and this would also address air quality issues and provide for a better living environment in terms of ventilation for future inhabitants. Habitable rooms (bedrooms and living rooms) fronting the roads should be non-opening.

To address the above and other matters, the following conditions and informatives are recommended.

Noise

No dwelling shall be occupied until a post completion noise survey has been undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning

Authority. The post completion testing shall assess performance of the noise mitigation measures in accordance with the 'Noise Impact Assessment Report' by Noise Air, Ref No P6595-R1-V1 dated 22nd August 2023 (The Report). If the noise levels set out in The Report are exceeded, additional noise mitigation measures to ensure the appropriate noise levels can be met shall be submitted to an approved in writing by the Local Authority and implemented in full prior to the first occupation.

The applicant must also have regards to thermal comfort and noise mitigation in accordance with Acoustic Ventilation and Overheating - Residential Design Guide by IOA and ANC. Where a scheme for approval for alternative means of ventilation and air cooling and heating is required, it must be demonstrated that:

- The alternative means of ventilation and cooling will not compromise any noise protection measures
- The alternative means of ventilation and cooling will not present an adverse noise or odour impact on occupants
- The alternative means of ventilation and cooling will enable optimum living conditions in all weather and with reference to climate change predictions

The means of ventilation must be in accordance with documents CIBSE Guide A:2015-Environmental Design, CIBSE TM52:2013-The limits of thermal comfort: avoiding overheating in European buildings and CIBSE TM59:2017-Design methodology for the assessment of overheating risk in homes. The alternative means of ventilation shall be maintained thereafter.

The final approved sound insulation scheme shall be implemented and maintained in accordance with the approved plans thereafter.

Air Quality:

- a) The applicant must submit a scheme of air quality mitigation for approval 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 all habitable rooms on the roadside. 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 and car park 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 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

A condition requiring a Construction Environmental Management Plan (CEMP) is required primarily to address the operations phase dust effects on air quality within the AQMA. A suggested condition is as follows:

Prior to the commencement of the development, a scheme for the control of noise, vibration and dust shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall comply with guidance found in BS5228-1:2009 and BS5228-2:2009 Noise and Vibration Control on Construction and Open Sites; the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) document 'Guidance on the assessment of dust from demolition and construction'. Upon commencement of the development, work shall be carried out in accordance with the approved scheme.

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.

No response from:

- National Amenity Societies

Neighbouring properties

17 surrounding properties were consulted plus site and press notices – overall consultation expiry date was 13.10.2023 – no responses received.

Officer's Analysis

The application site consists of a three storey building plus basement situated on the eastern side of Windmill Street at the junction with Lord Street. The building is Class E (offices) on ground floor with a maisonette at upper ground, first and second floor levels with storage at basement level.

The proposal is for conversion of the property into 2 x 1-bed and 1 x 2-bed residential flats. The building is grade II listed, located in the Upper Windmill Street Conservation Area, the Gravesend A226 One Way System, the Thames Estuary And Marshes Ramsar Buffer Zone, the Gravesend Town Centre Opportunity Area and in an Area of Archaeological Potential.

This is a re-submission of planning application ref. 20230249 which was for 'Conversion of the property into 2 x 1-bed and 1 x 2-bed residential flats' and was refused on the following grounds:

1. The proposal would result in the loss of an existing Class E(g)(i) office use (previously Use Class B1(a)) and would not deliver at least an equivalent number of new jobs on site or elsewhere within the Borough; the applicant has not demonstrated that the existing premises are no longer suited for employment purposes or are incapable of being made suitable at reasonable cost and that there is no demand for them through an appropriate marketing exercise carried out in accordance with Appendix 5 (Marketing

Requirements in relation to loss of existing B Class employment premises, sites or commercial wharves); and the existing premises does not have an unacceptable environmental impact on the area within which it is situated. As such the principle of the loss of the existing Class E(g)(i) office use on the site cannot be justified. The proposal is therefore contrary to Policy CS07 of the Gravesham Local Plan Core Strategy (2014).

2. The proposal would result in the loss of historic fabric and an alteration to the plan form of the building all of which is very much part of the significance and character of this listed building. Furthermore, insufficient information has been submitted in respect of works that may be required under the Building Regulations and to mitigate poor air quality and noise impacts for occupiers; such works that would be required for those measures have the potential to cause further harm to this listed building and the Conservation Area. On the basis of the submitted information the proposal would cause harm to the architectural and historic interest of this grade II listed building and the character and appearance of the Upper Windmill Street Conservation Area 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).

3. 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 in the vicinity. No details have been submitted to demonstrate that future occupiers would not be impacted on from such poor quality and noise and disturbance. As such, it is considered that the proposal would provide a poor level of amenity and living conditions for future occupiers of the flats. 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).

4. 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.

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 2 residential units would offer a minimal 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

This matter related to ground of refusal no. 1.

In that application it was stated on the existing floor plans and Heritage Statement that the site was offices (use class E(g)(i)) and although vacant was last used as the reception and office for a funeral directors, the Cooperative Funeralcare incorporating CF Morris along with a maisonette on the upper ground, first and second floor level with storage at basement level. The proposal therefore would result in a loss of Class E(g)(i) office use (previously Use Class B1(a)) but did not meet any of the requirements of Policy CS07 (LPCS) as it would not deliver at least an equivalent number of new jobs on site or elsewhere within the Borough; the applicant had not demonstrated that the existing premises are no longer suited for employment purposes or are incapable of being made suitable at reasonable cost and that there is no

demand for them through an appropriate marketing exercise carried out in accordance with Appendix 5 and lastly, the existing premises do not have an unacceptable environmental impact on the area within which it is situated.

In this current application the application form states that the existing use is a funeral directors and the upper floors are a flat. The existing floor plans show at basement level a body cold storage area, body wash area and coffin storage area; at ground floor a reception, office, chapel of rest, body reception area and a kitchen; at first floor a lounge, bedroom, kitchen and bathroom and at second floor two bedrooms. The covering letter states that the premises was a funeral directors previously and the upper floor was used as flats.

From Google Streetview the frontage can be seen with signage going back a number of years saying reception and office for different funeral directors through the years and which also occupied the neighbouring building no. 39 Windmill Street. On the basis of the more detailed information from the applicant the Google Streetview imagery it is considered that the premises operated more as a funeral directors in combination with no. 39 next door rather than offices in the traditional sense. As such there is no requirement to comply with Policy CS07 (LPCS).

The site is within the urban boundary of Gravesend which is covered by Policy CS02 (LPCS) which prioritises development in the urban area; this proposal for conversion of an existing building would therefore be in keeping with this.

In respect of the principle of development therefore, the proposal is considered compliant with Policy CS02 (LPCS) and ground of refusal no. 1 of previous application ref. 20230249 is resolved.

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

This matter related to ground of refusal no. 2.

In that application the plans showed a number of works including the removal of a number of internal walls and doors at basement, ground, upper floor and first floor levels, removal of the steps at basement level, removal of all chimney breasts, new internal walls proposed at basement, ground, upper ground, first and second floor levels and new staircases at basement and ground floor levels. A Heritage Statement had been submitted with the application but it was severely lacking in detail and did not contain what a Heritage Statement should do. Furthermore, the plans did not show what works would be required under the Building Regulations and no details of what works would be required to the building in order to mitigate against noise and poor air quality to protect future occupiers, given the site's location on the A226 one way system and in an Air Quality Management Area. As such given that the proposal would have resulted in the loss of historic fabric, an alteration to the plan form of the building and that insufficient information had been submitted with regards the works required under the Building Regulations and to mitigate poor air quality and noise impacts it was concluded that the proposal would be harmful to the architectural and historic interest of this grade II listed building and the character and appearance of the Upper Windmill Street Conservation Area.

In this current application from a comparison of the existing and proposed floor plans it can be seen that it appears it is no longer proposed to remove all the chimney breasts at all levels as they are shown on the proposed plans and new walls are no longer proposed at first or second floor level but other than that all other internal changes are still proposed as follows:

Basement level – removal of nearly all walls, removal of the steps, installation of some new walls and a new staircase;

Ground floor – removal of several walls most notably the wall dividing the front room and the room behind, installation of a new staircase and new walls;

A Heritage Statement has been submitted with the application but it is still the case as before that this is

severely lacking in detail and does not contain what a Heritage Statement should do. 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 which has been submitted with the application does not provide this information. It does not provide an assessment of significance and therefore it has not been demonstrated that the removal of the walls, stairs etc and installation of new walls and stairs would not impact on the significance of this listed building. However, on the basis of the submitted information it can be seen that the proposed internal works would alter the original plan form of the listed building which would therefore be harmful to the significance of this listed building.

A Noise Impact Assessment has been submitted with this application (it was not in the previous refused application). The Noise Impact Assessment finds that the existing windows will not be able to meet the internal noise levels specified in BS8233:2014 and as such specifications are given for double glazed windows. It advises secondary glazing may be a consideration due to the historical nature of the building. The report also recommends that a ventilation system be installed for the rooms fronting the road so that suitable ventilation can be provided when windows are kept closed to keep out the traffic noise. The proposed plans do not show the works that are required to mitigate noise impact nor are those works discussed in the Heritage Statement and therefore it does not assess the impact of those works on the significance of this listed building. However, the removal of the existing original/historic windows and their replacement with double glazed windows would not be acceptable given this is a listed building; this would result in the loss of original/historic fabric and double glazing is not an authentic or sympathetic form of glazing for a building of this age and would be harmful to its architectural and historic interest. The Noise Impact Assessment states secondary glazing may be an option but this is not mentioned in the submitted plans or Heritage Statement to enable any assessment of this. No reference is made in the submitted plans or Heritage Statement to the mechanical ventilation system that the Noise Impact Assessment states is required but this would result in a number of openings and ductwork etc. throughout the building which would be harmful to the architectural and historic interest of this listed building.

An Air Quality Assessment has also been submitted with this application (it was not in the previous application). The Air Quality Assessment finds that monitored levels of NO₂ close to the site have been found to be below the Air Quality Objectives so there are no concerns. GBC Environmental Protection advise however, that as the site is in an AQMA air quality is a consideration and that the mechanical ventilation which is proposed for noise reasons would address air quality issues too and provide better living environment in terms of ventilation for future occupiers. As stated above a mechanical ventilation system would result in a number of openings and ductwork etc. throughout the building that would be harmful to the architectural and historic interest of this listed building.

No details were provided in the previous application of all the works that would be required under the Building Regulations for the proposed flat conversion and they still have not been submitted in this application, the submitted plans and Heritage Statement make no reference to the works that would be required under the Building Regulations. Being that this is a listed building the Council would require the proposed plans to show full details of all of the works that would be required under the Building Regulations for the flat conversion to take place and the Heritage Statement to discuss the impact on the significance on the listed building at application stage in order that the full impact of the proposal could be assessed for the impact on the listed building. Works to the building in order to satisfy, for example, noise and energy requirements under the Building Regulations could cause an impact on the listed building. In the absence of that detail on what works would be required it cannot be known what impact the works would have on the architectural or historic interest of this grade II listed building or the character or appearance of the Upper Windmill Street Conservation Area.

In summary, the proposal would result in the loss of historic fabric and an alteration to the original plan form of the building and the mitigation works that would be required to the building to address poor air quality and noise impact for future occupiers such as the removal of the existing original/historic windows and

replacement with double glazed windows and the installation of a mechanical ventilation system would all be harmful to the significance and character of this listed building. It must therefore be concluded that the proposal would be harmful to the architectural and historic interest of this grade II listed building. As there would be works such as loss of the existing original/historic windows and possible external ductwork and vents associated with the mechanical ventilation system the proposal would not preserve the character and appearance of the Upper Windmill Street Conservation Area but would cause harm. The proposal would therefore be contrary to Policies CS19 and CS20 (LPCS), saved Policies TC2 and TC3 (LPFR) and section 16 of the NPPF (2023) and ground of refusal no. 2 of previous application reference 20230249 still stands in respect of the impact on the listed building and the conservation area.

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) states that 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 1

(Across basement & ground floor – 1 bedroom, 2 storey dwelling) = 59 sq. m

The number of bed spaces (persons) is not shown in this flat but the minimum size for a 1 bedroom, 2 person, 2 storey dwelling is 58 sq. m and flat 1 would achieve this.

Flat 2

(Across first and second floors - 2 bedrooms, 3 persons, 2 storeys dwelling) = 87.8 sq. m

The minimum standard for a 2 bedroom, 3 persons, 2 storey dwelling is 70 sq. m - flat 2 would achieve this.

Flat 3

(Ground floor – 1 bedroom, 2 persons, 1 storey flat) = 53.2 sq. m

The minimum size for a 1 bedroom, 2 persons, 1 storey dwelling is 50 sq. m – flat 3 would exceed this.

In respect of flat sizes the flats would therefore all comply with the minimum standards in the Technical Housing Standards (2015).

Private Amenity Space

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

Air Quality & Noise Impact

This matter related to ground of refusal no. 3 of previous application ref. 20230249. 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 in the vicinity but no details had been submitted to demonstrate that future occupiers would not be impacted on from such poor quality and noise and disturbance. In this application a Noise Impact Assessment which states that the existing windows will not be able to meet the internal noise levels specified in BS8233:2014 and as such states double glazing would be required or that secondary glazing may be considered given it is a listed building. The report also recommends that a ventilation system be installed for the rooms fronting the road so that suitable ventilation can be provided when windows are kept closed to keep out the traffic noise. The Air Quality Assessment finds that

monitored levels of NO₂ close to the site have been found to be below the Air Quality Objectives so there are no concerns but GBC Environmental Protection advise that as the site is in an AQMA air quality is a consideration and that the mechanical ventilation which is proposed for noise reasons would address air quality issues too and provide better living environment in terms of ventilation for future occupiers.

As such the building as existing would not protect the amenity of future occupiers from noise impact and poor air quality but there are works that could be carried out to the building that would provide appropriate mitigation. However, the mitigation works would not be supported due to the harm that would be caused to the architectural and historic interest of this grade II listed building and the character and appearance of the Upper Windmill Street Conservation Area as explained above. As such future occupiers would not be protected from noise impact and poor air quality and in this regard the proposal is contrary to Policy CS19 (LPCS) and paragraph 130 (f) of the NPPF (2023) and ground of refusal no. 3 still stands and has not been resolved in respect of not providing an acceptable level of amenity and living conditions for future occupiers of the flats.

Impact on Ecology/Biodiversity

This matter related to ground of refusal no. 4 of previous application ref. 20230249 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 two units and the applicant has still not paid the required tariff (£314.05 x2 = £628.10). 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) and in this regard ground of refusal no. 4 of application ref. 20230249 has not been resolved.

Other matters

Neighbouring Amenity

The proposal does not raise any issues in respect of the amenity of neighbouring properties and as such in this respect the proposal is compliant with Policy CS19 (LPCS).

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 a funeral directors with a 3 bedroom maisonette above and it is proposed to convert the building to three flats - two with 1 bedroom and one with 2 bedrooms making a total of four bedrooms. Therefore, overall it is considered that the proposal would not result in any additional demand in parking over the existing use and therefore no requirement for additional parking at the property. In any case 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

The proposal would contribute two additional units which would be a minimal contribution to the Borough's housing supply. The proposal is considered acceptable in respect of neighbouring amenity, parking and highway safety and archaeology.

In respect of the principle of development the applicant has provided more information and with further investigation it appears the building was last used a funeral director's (with the upper floors a maisonette) and therefore there is no requirement to justify loss of office use and ground of refusal no. 1 is therefore considered to have been resolved.

The proposal would still be unacceptable in respect of the impact on the architectural and historic interest of this grade II listed building and the character and appearance of the Upper Windmill Street Conservation Area in respect of the loss of historic fabric, alteration to the original plan form of the building and the mitigation works that would be required to the building to address poor air quality and noise impact for future occupiers such as the removal of the existing original/historic windows and replacement with double glazed windows and the installation of a mechanical ventilation system would all be harmful to the significance and character of this listed building and therefore ground of refusal no. 2 of previous application reference 20230249 still stands in respect of the impact on the listed building and the conservation area.

This application has had a Noise Impact Assessment and a Air Quality Assessment submitted with it which advise that with appropriate mitigation measures the amenity of future occupiers would be protected. However, as such mitigation works would not be supported due to the harm that would be caused to the

architectural and historic interest of this grade II listed building and the character and appearance of the Upper Windmill Street Conservation Area future occupiers would not be protected from noise impact and poor air quality and in this regard ground of refusal no. 3 of previous application reference 20230249 still stands and has not been resolved in respect of not providing an acceptable level of amenity and living conditions for future occupiers of the flats.

The applicant has still not paid the required SAMMS tariff and therefore the proposal has 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.

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:	Richard Hart
Signed:	<i>Rebecca Harrison</i>	Signed:	<i>R Hart</i>
Dated:	20th November 2023	Dated:	23rd November 2023