



Delegated Report

Prior Approval Application

Planning Application No:	20240487
Location:	11A Milton Road Gravesend Kent DA12 2RE
Description:	Application to determine if prior approval is required for a proposed; Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA.
Applicant:	Mr D Ponsford
Site Visit Date:	Desktop assessment

Submitted Documents/Plans

Application form
OS Plan
Drawing no. 7680-P-01 Rev. A (Existing and Proposed Plans and Elevations)

Relevant Planning History

Reference	Description	Decision	Decision Date
19950091	Change of use of the ground floor from retail to a financial consultants office and use of the first and second floors as a self-contained flat.	Permitted	10.03.1998
19890030	Change of use of the first and second floors to offices and erection of single storey rear extension to form store/staff room and w.c.	Permitted	21.08.1989
19881027	Installation of a new shopfront and alterations to the front elevation	Permitted	05.12.1988

Development Plan

Gravesham Local Plan Core Strategy (2014)

- CS01 – Sustainable Development
- CS02 – Scale and Distribution of Development
- CS11 – Transport
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 – Development and Design Principles

Gravesham Local Plan: First Review (1994)

- T1 – Impact of Development on the Highway Network
- P3 – Vehicle Parking Standards

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.

National Planning Policy Framework (2023)

- Section 2 – Achieving sustainable development
- Section 8 – Promoting healthy and safe communities
- Section 9 – Promoting sustainable transport
- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed and beautiful places
- Section 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- SPG2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020
- Technical Housing Standards – nationally described space standard (2015)
- SPG4 - KCC Parking Standards (2006)
- Householder Extensions/Alterations Design Guide (2021)

Consultations, Publicity and Representations

The application has been advertised on site. The consultation period expired on 21 June 2024.

Consultees

Environment Agency

We have no comments to make on this planning application as it falls outside our remit as a statutory planning consultee.

KCC Highways

It would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

GBC Environmental Protection

The following comments are made:

Noise

In terms of this type of application, it is acknowledged that only the consideration of existing commercial noise sources is applicable. With regards to this site, Google Maps indicates a butcher's shop below the proposed flat. This will have refrigeration units and as such noise from plant and equipment both internally transmitted and also any units located externally is a consideration. In addition, restaurant/takeaway premises are located on either side of this building and again noise could be an issue from these (customer noise and also noise from kitchen extract systems/other plant/equipment).

This premises is also in a busy town centre location (adjacent to the A226 one-way system which is heavily trafficked). Consideration also needs to be given to the late-night economy (people coming and going from late night pubs, bars, restaurants, takeaways. It's noted that habitable rooms (bedroom and living room) are located on the road frontage.

Noise from early morning or out of hours deliveries commercial premises in the area may also give rise to noise.

Being an older property, it is possible that the sound insulation quality of the internal floor/ceiling and also wall partitions may not be that robust. 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. 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 including BS 8233:2014 and BS4142:2014:

- o Traffic noise (although not a consideration in this type of application, should be included for completeness)
- o Noise from fixed building services/mechanical plant/equipment etc noise associated with the nearby commercial uses (including the use on the ground floor)
- o People noise associated with the use of the late-night town centre uses at night (including the use on the ground floor).
- o Early morning delivery noise to commercial uses
- o Internal noise/sound insulation
- o 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). As such, new sensitive receptors will be introduced into an area recognised as having poor air quality. Again, it's appreciated that this is not a matter directly applicable under this type of application, the information/advice is provided for consideration and as an informative for the applicant.

It is advised that as habitable rooms front the A226, that an appropriate scheme is likely to include the requirement for rooms with windows facing the roadside to be upgraded and sealed so as to prevent pollution from entering the residential unit and a MVHR system be installed as a means of alternative ventilation and cooling. 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 above, the following conditions and informatives are recommended.

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 flat, 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.

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.

Air Quality Informative:

- a) The applicant should consider a scheme for air quality mitigation measures 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:

- o a heat exchange unit,
- o noise attenuation
- o 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
- o 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.
- o Windows to the affected rooms on the 1st floor shall not have trickle vents and shall be fixed shut.

A checklist of points to be considered and included in the scheme can be provided.

b) The approved scheme should be installed, before occupation and 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.

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.

Officer's Analysis

Proposal

This application seeks determination pursuant to Article 3, Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as to whether Prior Approval is required in respect of the proposed change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3).

The existing property comprises a mid-terrace two storey property with rooms in the roof. The ground floor is in retail use (and will remain so) and the existing first and second floor contain offices.

The proposal involves the conversion of the first and second floor to residential, with some internal alterations. There will be no external changes. The accommodation will comprise a kitchen and lounge on the first floor and a bedroom and bathroom on the second floor.

There is no existing or proposed car parking.

Assessment

Class MA of Part 3 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order. Class MA was inserted by SI 2021 No. 428, and recently amended by SI 2024 No. 141.

Paragraph MA.1. states that development is not permitted by Class MA:

- (b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;
- (d) if land covered by, or within the curtilage of, the building—
 - (i) is or forms part of a site of special scientific interest;
 - (ii) is or forms part of a listed building or land within its curtilage;
 - (iii) is or forms part of a scheduled monument or land within its curtilage;
 - (iv) is or forms part of a safety hazard area; or
 - (v) is or forms part of a military explosives storage area;
- (e) if the building is within—
 - (i) an area of outstanding natural beauty;
 - (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981;
 - (iii) the Broads;
 - (iv) a National Park; or
 - (v) a World Heritage Site;
- (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or
- (g) before 1 August 2022, if—
 - (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and
 - (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

The following points assess the submitted application against the above criteria:

- (b) Google Maps Street Views show the property as being occupied in November 2022 by 'Supreme Workforce' (a recruitment consultancy) and 'to let' in 2020; the sales particulars from the time (from Sealeys) describe the first and second floor as offices. This use falls within one of the classes in sub-paragraph 2 (Class E).
- (d) The site is not part of a site of special scientific interest; a listed building; a scheduled monument; a safety hazard area; or a military explosives area.
- (e) The building is not within: an area of outstanding natural beauty; an area specified for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; the Broads; a National Park; or a World Heritage Site.
- (f) The site is not occupied under an agricultural tenancy.
- (g) The proposal does not fall within Class O (offices to dwellinghouses).

Development under Class MA is permitted subject to the following conditions set out in paragraph MA.2:

(2) Before beginning development under Class MA, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- (a) transport impacts of the development, particularly to ensure safe site access;
- (b) contamination risks in relation to the building;
- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; and
- (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 200656, the impact on the local provision of the type of services lost.
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

(a) Transport impacts of the development

The sites lies in the Town Centre within the urban area of Gravesend. It is in a sustainable location with good access to public transport links and public car parking. There is no parking provision for the property.

The parking and access requirements for a shop with offices above, and a shop with a flat above are comparable, particularly in such a sustainable location and where there are similar provisions and requirements at neighbouring premises, and there is therefore no reason to raise an objection on this basis.

Prior approval would not therefore be required in terms of the transport and access aspects of the proposed development under paragraph 115 of the NPPF 2023, Policy CS11 of the Core Strategy 2014 and Policies T1 and P3 of the Local Plan 1994.

(b) Contamination

The application involves the conversion of an existing building involving internal alterations only. There would be a low environmental risk from such a proposal. Therefore, no contamination issues should arise as a result of the development and prior approval would not be required in terms of the contamination risks in relation to the building under Policy CS19 of the Core Strategy 2014 and paragraph 189 of the NPPF 2023.

(c) Flooding

The development is in flood zone 1. This means it has a low probability of flooding from rivers and the sea. Therefore, no flood issues should arise as a result of the development and prior approval would not be required in terms of the flood risks in relation to the building under Policy CS18 of the Core Strategy 2014 and paragraph 173 of the NPPF 2023.

(d) Noise

The application site is within a busy town centre location with a late-night economy and early morning/out of

hours activities (deliveries etc). The properties either side of the application site are restaurants/takeaways, with customers and kitchen extract systems. The ground floor unit at No. 11 is a grocers/off licence, and may contain refrigeration units. The site is also adjacent the A226 one-way system, which is heavily trafficked. All of these surrounding uses are likely to give rise to noise issues, and as the application property is older, the sound insulation quality may not be sufficiently robust to protect against any noise incursions.

In order to address the concerns regarding both external and internal noise, a noise assessment should therefore be undertaken, and this must address the impact on the residential amenity of any future residents of the proposed flat.

On the basis of this condition, the impact on the future occupiers of the application property in terms of noise disturbance would be considered to be sufficiently addressed. Therefore, subject to an appropriate condition, prior approval is granted in terms of the impacts of noise on the intended occupiers of the development under Policy CS19 of the Core Strategy 2014 and paragraph 180 of the NPPF 2023.

(e) Conservation

The building is in the King Street Conservation Area but does not involve any development on the ground floor. Prior approval would not be required in this regard.

(f) Natural light

As can be seen on the accompanying floorplans, the proposed dwelling will benefit from windows that will serve all habitable rooms and mean that future occupiers will receive a good provision of natural light. Prior approval is therefore granted in terms of the provision of adequate light for the development under paragraph 135 of the NPPF 2023 and Policy CS19 of the Core Strategy 2014.

(g) Industrial area

The site is not in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses, and therefore there would be no adverse impact on the intended occupiers of the development with the introduction of a residential use. Prior approval would not be required in this regard.

(h) Loss of services

As the premises comprises offices, the development does not involve the loss of services provided by a registered nursery or a health centre, and therefore there would be no impact or loss on the local provision of such services. Prior approval would not be required in this regard.

(i) Fire safety

In relation to the interpretation under MA.3., the development does not relate to a building that contains two or more dwellinghouses and satisfies the height condition in paragraph (3), read with paragraph (7), of article 9A (fire statements) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the building is less than 18m in height and less than 7 storeys).

Other Matters

Thames Estuary and Marshes Ramsar / Special Protection Area (SPA) – SAMMS Tariff:

As the application site is within 6km of the Thames Estuary and Marshes SPA/Ramsar Sites and would provide additional residential accommodation, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.

In addition to the criteria of Class MA, the proposed development is subject to Regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010 (as amended), which require the Local Planning Authority to take into account whether the proposal would, either alone or in combination, have likely significant effects on a European Site (SPA/SAC/Ramsar site). Regulation 73 (1) of the Habitat Regulations states: "It is a condition of any planning permission granted by a general development order... that development which is likely to have a significant effect on a European site... (either alone or in combination with other plans or projects)... must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 75."

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

An informative to this effect would be added to any approval.

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). As such, new sensitive receptors will be introduced into an area recognised as having poor air quality. Whilst this is not a matter directly applicable for consideration under this type of application, it is advised that an informative be included recommending that as habitable rooms front the A226, an appropriate scheme should include the requirement for rooms with windows facing the roadside to be upgraded and sealed so as to prevent pollution from entering the residential unit and a MVHR system be installed as a means of alternative ventilation and cooling. 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.

Conclusion and Recommendation

The application meets the criteria as set out in Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in considering that criteria, the proposal is considered acceptable with regard to transport impacts, contamination risks, flooding risks, noise impacts (subject to appropriate condition), conservation area impacts, the provision of adequate light, impact in relation to a residential use in an industrial area, loss of services and fire safety. On this basis, no objection is raised under Paragraphs 115, 135, 173, 180, and 189 of the NPPF 2023 and Policies CS02, CS11, CS18, and CS19 of the Core Strategy 2014, and saved Policies T1 and P3 of the Local Plan 1994. Prior approval is granted subject to the time limit and restricted use conditions set out at (5) and (6) of paragraph MA.2, as well as conditions relating to noise and sound insulation assessments.

(For detailed conditions and informatives, see draft Decision)

Case Officer:	Mrs Katherine Parkin	Team Leader:	Miss Faye Hobbs
Signed:	<i>K. Parkin</i>	Signed:	
Dated:	18 th July 2024	Dated:	23 July 2024