

Application: 20230515

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015 (AS AMENDED)**

To: **Mr Robert Lane
Margaux
Woodlands Lane
Shorne
Gravesend
Kent
DA12 3HH
United Kingdom**

REFUSAL OF CERTIFICATE OF PROPOSED LAWFUL USE OR DEVELOPMENT

GRAVESHAM BOROUGH COUNCIL has considered your application dated 10th July 2023 under the provisions of Section 192 of the above mentioned Act and has determined the use, operation or matter set out therein being:-

Application for a Lawful Development Certificate for works to facilitate the mooring of the historic steam tug Cervia at St Andrews Quay, Royal Pier Road, Gravesend, DA12 2BD, and its proposed use as a heritage museum under Use Class F1, in accordance with Section 192 of The Town and Country Planning Act 1990.

at **St Andrews Gardens
Royal Pier Road
Gravesend
Kent**

WOULD NOT HAVE BEEN LAWFUL within the meaning of the said Act and, thus, application for planning permission in respect thereof must be made and planning permission obtained before any such proposals can be carried out.

The grounds for this determination are as follows:-

- 1 The proposed development would constitute a material change of use of the land and would involve operational development. As such and in line with section 55(1) of the Town and Country Planning Act 1990 (as amended), planning permission would be required. The proposal would therefore not be lawful and pursuant to section 192(2) of the Town and Country Planning Act 1990 (as amended), a Certificate of Proposed Lawful Development/Use cannot be granted.

INFORMATIVES:-

1 DRAWINGS AND DOCUMENTS

For the avoidance of doubt the decision to refuse this application was taken in relation to the following plans and documents:

Application form for a Lawful Development Certificate for a Proposed Use or Development;
Drawing no. 001 Rev. 3 Existing location plan;
Drawing no. 002 Rev. 3 Proposed location plan (Option 1);
Drawing no. 003 Rev. 3 Proposed location plan (Option 2);

Drawing no. 004 Rev. 2 Existing elevations;
Drawing no. 005 Rev. 2 Proposed elevations low tide (2 options);
Drawing no. 006 Rev. 2 Proposed elevations high tide (2 options);
Drawing no. 007 Rev. 2 General arrangement, deck plans and section for the Cervia;
Drawing no. 008 Rev. 2 Existing mooring and utilities arrangements;
Drawing no. 009 Rev. 2 Proposed mooring and utilities arrangements;
Drawing no. 010 Rev. 1 Typical mooring bollard;
Planning and Heritage Statement;
Email from the applicant received 20 June 2023;
Email from the applicant received 04 July 2023;
Letter from the applicant dated 01 July 2023;
Supplementary information document;
8 Photographs;
3D aerial view existing;
3D aerial views proposed (2 options);
GBC Cabinet decision 10 January 2011;
GBC Cabinet minutes 10 January 2011;
LV21 website; and
Kent Online website 22 April 2017.

2 COMMENTS OF THE PORT OF LONDON AUTHORITY (PLA)

For the information of the applicant, the PLA have provided the following comments regarding this application;

Initial response:

Thank you for consulting the Port of London Authority (PLA) on the above mentioned application for a Lawful Development Certificate for the mooring of the historic steam tug Cervia at St Andrews Quay, Royal Pier Road. We have now had the opportunity to review the submitted documents and have a number of concerns. For information, the PLA has previously provided, pre-application advice on this proposal and informed the applicant that it was likely that planning permission would be required for this proposal, which remains the position in terms of our overall conclusion.

A lawful development certificate can be granted for existing or proposed use or some operational development that is considered lawful for planning purposes (section 191-192 of the Town and Country Planning Act 1990). The permanent mooring of the Cervia and use as a heritage museum under Use Class F1, at St Andrew's Gardens would be considered a material change of use of the site and therefore is not considered to meet the appropriate tests for lawful development. The existing moorings are for temporary use and therefore the proposal to moor on a permanent basis and use as a heritage museum is development and outside the scope of Permitted Development. In addition to planning permission the proposal is also likely to need a Flood Risk Activity Permit from the Environment Agency.

In preparing a planning application for this proposal we would like to advise on a number of issues that should be addressed. Further detail should be provided on the mooring bollards to ensure that they are fit for purpose and that the vessel is properly secured in the interests of safety (chains, wires and welding securings may need to be used). The Use of the Tidal Thames provides further guidance, including consideration on the need to provide any wash mitigation measures within the planning application to take account of any effects of wash and draw off experienced from passing vessels. As this is a drying berth the vessel must also be moored to account for the rise and fall of the tide and any forthcoming application should be supported by more detailed information on this matter.

As part of any forthcoming application information will be required on the provision of any appropriate riparian life saving equipment (such as life buoys) in line with the PLA's 'A Safer Riverside' guidance for development on and alongside the tidal Thames.
(<https://www.pla.co.uk/assets/asaferriversidev15.pdf>).

It will need to be demonstrated within a forthcoming planning application that the river wall is capable of taking the load associated with having both the Cervia and LV21. If LV21 needs to be repositioned to accommodate the mooring of Cervia, consent will be required from the LV21 Licensee any associated River Works Licence (RWL) for this vessel will require amendment. To

confirm a RWL will also be required for the mooring of the Cervia and the PLA's Statutory Consents and Compliance team should be contact with regard to this at lic.app@pla.co.uk .

Whilst we have provided details of what is required to support an application this should not be taken as formal pre application advice or that a planning application or forthcoming RWL would be successful, as these will need to be considered on their own merits. The PLA therefore requests to be reconsulted on submission of a planning application for this proposal.

Second response:

We acknowledge that the applicant is aware of the need to submit an application for a River Works Licence (RWL) and trust that the information provided in our previous response has been helpful. We also recognise the engagement of the applicant with regard to Environment Agency requirements.

As we have noted in the pre-application discussion and in our response to the application on 26th June 2023, the permanent mooring of the Cervia and use as a heritage museum under Use Class F1, at St Andrew's Gardens is considered a material change of use and therefore requires a full planning application. This remains our view as the applicant hasn't provided any further information or amendments to the application to deem the proposal Permitted Development. The PLA are not in a position to comment on the status of other vessels. All planning applications are assessed on individual merits against the policies and legislation applicable at that time.

3 COMMENTS OF THE ENVIRONMENT AGENCY (EA)

For the information of the applicant, the EA have provided the following comments regarding this application;

We do not have objections to the above application, subject to the following comments.

Biodiversity:

We do not have any objections provided more information for the mitigation of habitat loss is provided.

Whilst we are supportive in principle of encouraging greater public engagement with the river, we are aware that the vessel will ground out at low tide upon the intertidal mudflat. This will potentially precluding viable habitat for wading birds.

Please could confirm how the applicant seeks to mitigate for this potential loss through either off-site riverine enhancement or by design?

Barge grids have been used elsewhere on the Thames to elevate Dutch barges from grounding out over intertidal mud. However, we are aware the hull design of this vessel may not allow a similar system.

Flood Risk:

We would not object to the principle of the mooring changes and the placement of the historic steam tug. However, it should be noted that any works to the formal tidal flood defence would require a Flood Risk Activities Permit (FRAP) from the Environment Agency.

The tidal Thames frontage features a flood defence line which should provide a 1 in 1000 year level of protection to much of the neighbouring land. At St Andrew's Gardens, much of the flood defence line is formed by high ground and a low wall which both run inland of the river wall, where the moorings are located.

As much of the river wall is not a formal tidal flood defence, we would not object to the change in moorings along this length. However, directly west of St Andrew's Garden the formal tidal flood defence is formed by the river wall which features a higher crest level where it fronts the pub garden.

From the submitted drawings, it would appear that the proposed moorings do not interact with the tidal flood defence. Were any of the proposed construction activities to impact the tidal flood defence, the applicant must obtain a FRAP from the Environment Agency.

Informative Flood Risk Activity Permit:

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culvert (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in a floodplain more than 8 metres from the river bank, culvert or flood defence structure (16 metres if it's a tidal main river) and you don't already have planning permission.

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03702 422 549. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

4 COMMENTS OF KCC HERITAGE AND CONSERVATION

For the information of the applicant, KCC Heritage and Conservation have provided the following comments regarding this application;

I welcome this positive application which would add to the heritage interest of Gravesend.

The wharf where it is proposed to moor the historic steam tug Cervia has archaeological interest, related to the wharf's historic development. The proposals would include some limited below-ground works for services and possibly to the wharf, and I therefore recommend that if the project goes ahead the 'groundworks' are subject to an archaeological watching brief. The following condition could be applied to any forthcoming consent:

To ensure that features of archaeological interest are properly examined and recorded during development works:

A) Prior to any development works the applicant (or their agents or successors in title) shall secure an archaeological watching brief so that excavations and other development works are observed and items of interest and finds are recorded. The watching brief shall be undertaken by an archaeologist approved by the Local Planning Authority and in accordance with a written programme and specification, which has been submitted to and approved in writing by the Local Planning Authority.

B) The archaeological watching brief, recording, post excavation assessment, analysis and reporting shall be carried out in accordance with the agreed specification and timetable.

C) Within 6 months of the completion of the watching brief a Report shall be submitted to and approved in writing by the local planning authority.

REASON: To ensure that features of archaeological interest are properly examined and recorded

I would be pleased to discuss the above further and agree a specification for the watching brief with the applicant's archaeologist.

Dated: 1 September 2023

Civic Centre
Windmill Street
Gravesend
Kent
DA12 1AU

Wendy Lane MRTPI
Assistant Director (Planning)
Planning Service

Your attention is drawn to the following notes

NOTES

1. Any person who wishes to appeal –

- (a) against a determination of the Council under Section 195 of the Act; or
- (b) on the failure of the Council to give notice of their decision within 8 weeks of the date of the application

shall give notice of the appeal to the Secretary of State within **six months of the decision or of the expiry of the appropriate period allowed under Article 33 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 for giving such notice (two months)**, as the case may be, or such longer period as the Secretary of State may at any time allow.

- **For further information regarding Appeals and to make an application please click the relevant link:**

<https://www.gov.uk/appeal-householder-planning-decision>

<https://www.gov.uk/appeal-planning-decision>

2. Such person shall also furnish to the Secretary of State a copy of the following documents:-

- (i) the application;;
- (ii) all relevant plans, drawings, particulars and documents submitted with the application;
- (iii) the notice of the decision or determination, if any;
- (iv) all other relevant correspondence with any Local Planning Authority.