

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20230515
Location	St Andrews Gardens Royal Pier Road Gravesend Kent
Proposal:	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.
Applicant:	Mr Robert Lane
Site Visit	06 July 2023

Plans & 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.

Superseded Plans & Documents

Drawing no. 001 Rev. 2 Existing location plan;
Drawing no. 002 Rev. 2 Proposed location plan (Option 1); and

Drawing no. 003 Rev. 2 Proposed location plan (Option 2).

Procedural issues

Following a request from the case officer, the applicant clarified that the proposed development included physical works as well as a change of use and the description was amended from 'Application for a Lawful Development Certificate for 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.' to that shown above. Additional drawings and information were submitted to illustrate the proposed operational development.

Following a further request from the case officer, the red line boundary for the application site was amended to include the area affected by the proposed operational works.

Relevant Planning History

Reference	Description	Decision	Decision Date
20180049	Application for the approval of conditions 3 & 4 attached to planning permission reference no. 20170567 relating to the details of a replacement tree and an archaeological watching brief.	Approved	09.02.2018
20170567	Installation of statue in St. Andrew's Garden including the removal of one tree.	Permitted	28.09.2017
20131066	Erection of a statue.	Permitted	07.01.2014
20120931	Hybrid planning application (part outline and part detailed) for the demolition of buildings and redevelopment of land in Gravesend Town Centre known as the Heritage Quarter comprising the Western Quarter and Eastern Quarter. The Western Quarter comprising the West Street and St. George's Centre car parks, St. George's Church and Gardens, part of the existing St. George's Centre, the Blockbuster site and the river walkway between Elizabeth Gardens and Town Pier. The Eastern Quarter comprising Horn Yard and Market Square car parks and St. Andrews Gardens. The proposal comprises: Western Quarter: Outline proposal (including details of access only with all other matters reserved) for a mix of uses including retail and food & drink (Use Classes A1, A2, A3, A4 and A5), offices (Use Class B1), between 164 no. and 187 no. residential units (Use Class C3), community space (Use Class D1), public and private car parking, public realm and amenity space as well as associated servicing, landscaping and highway works. Eastern Quarter: Detailed proposal for the erection of 3 no. buildings to provide 141 no. residential units (Use Class C3),	Permitted	01.05.2014

	restaurant space (Use Class A3), a 50 no. bedroom hotel (Use Class C1) as well as public and private car parking and associated servicing, landscaping and highway works.		
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Consultations, Publicity and Representations

There is no statutory requirement to undertake publicity or consultation regarding a Lawful Development Certificate (LDC) application. However in this instance, the Borough Council consulted the following;

Port of London Authority

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.

Environment Agency

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.

KCC Heritage and Conservation

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.

Officer Assessment

Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	Yes*
Article 4 Direction	No
Permitted Development Rights Removed/Restricted	No

* Within High Street & Queen Street Conservation Area and adjoins Riverside, Gravesend Conservation Area.

General Approach

This application is for a LDC and not for a planning permission and as such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The applicant is responsible for providing sufficient information to support the application and the proposal must be described with sufficient clarity and precision to enable the Local Planning Authority (LPA) to understand exactly what is involved. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The applicant alleges that St Andrews Quay has been a commercial maritime mooring facility for over ten years. They state that the LV21 lightship has operated as a static heritage arts attraction since 2017 with no planning permission for a change of use. Therefore, they allege that the proposed development would not constitute a change of use of St Andrews Quay or St Andrews Gardens.

The applicant states that the proposed use would be a museum within Class F1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

The applicant has submitted evidence to corroborate these allegations, which is set out in the Plans & Documents Section above.

Details of the proposed development

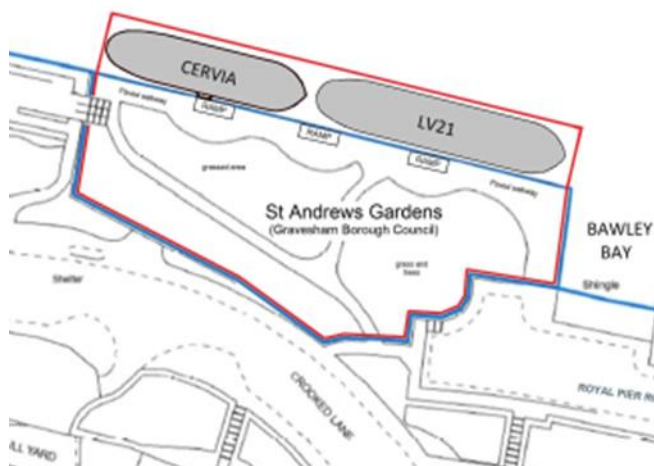
From the submitted evidence, the proposed development which is the subject of this application, comprises of the following;

- Relocation of the LV21 lightship either 15 metres to the east (Option 1) or 18 metres to the west (Option 2);
- Mooring of the Cervia adjacent to the LV21 lightship and the St Andrews Quay (at high tide the Cervia would float on the river and at low tide, it would sit on the river bed);
- Use of the Cervia as a heritage museum;
- Access to the Cervia would be via a removable gangway connected to one of the three existing access platforms on St Andrews Quay.
- Installation of four 20 tonne mooring bollards (three would replace existing 10 tonne mooring bollards);
- Installation of electricity and water services via two new utilities pillars;
- Removal of existing utilities pillar;
- Extension of an existing raised hardstanding/ramp (if option 1 is implemented);
- Extension of an existing access platform on the quayside (if option 1 is implemented);
- Re-siting of access framework for LV21; and
- Removal of existing metal duct.

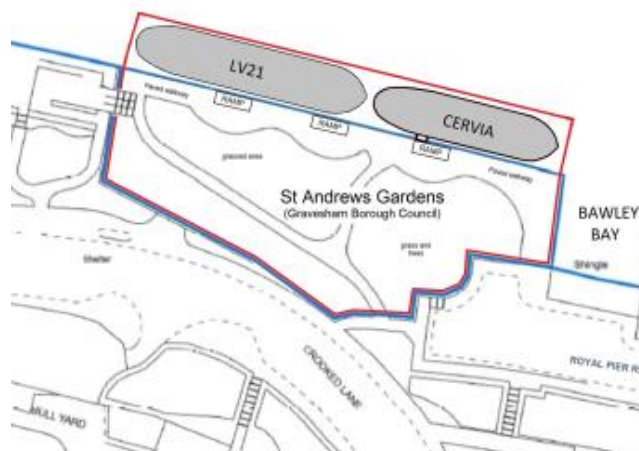
It should be noted that the proposed development includes operational development as well as a proposed use of the land.

The two options for the proposed locations of the LV21 and the Steam Tug Cervia are;

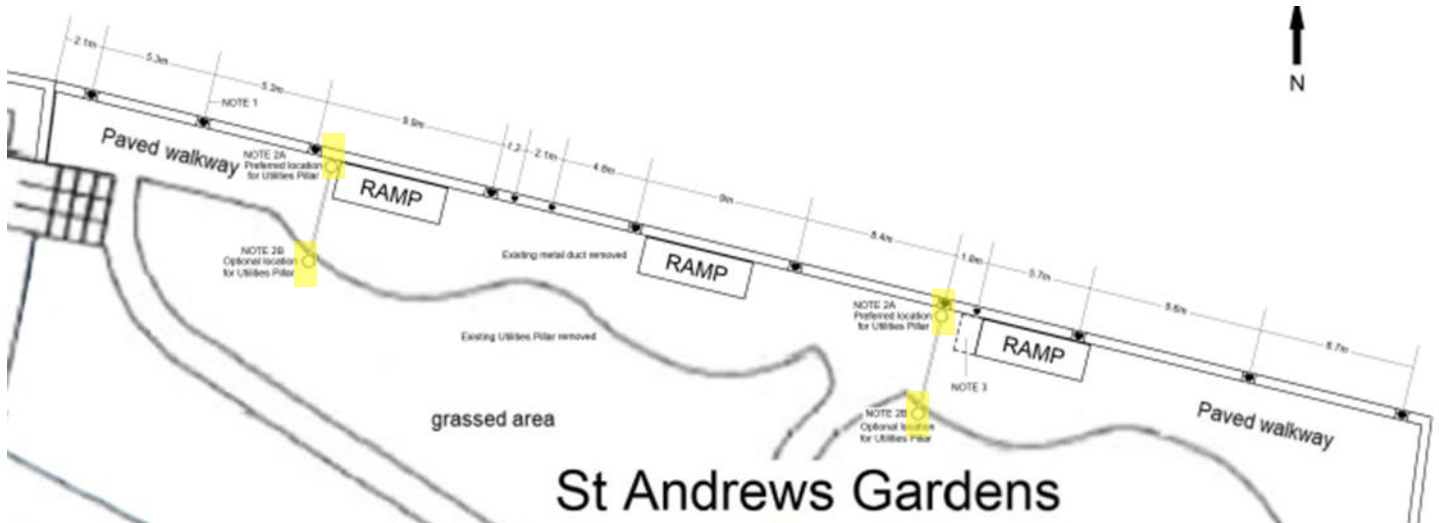
Option 1



Option 2



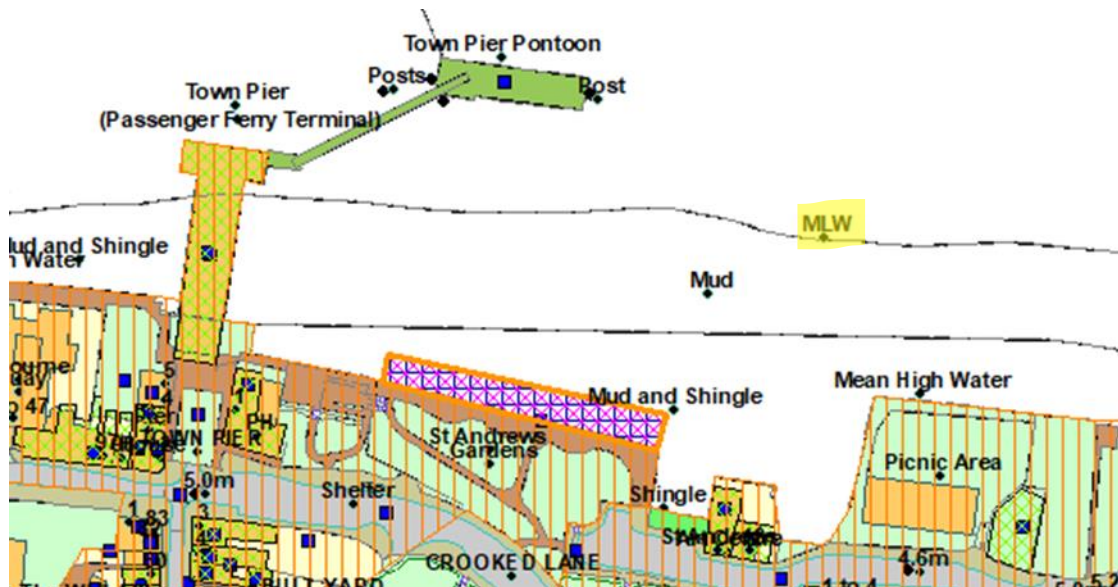
There are also two options in each location for the proposed utilities pillars (highlighted below);



The applicant has provided a Planning and Heritage Statement, which amongst other things, sets out planning policies, provides a heritage appraisal and covers visual, transport etc impacts. However, it is noted that these issues relate to the planning merits of the case and therefore, are not relevant to the determination of this application.

The existing use of the application site

The application site comprises of land within St Andrews Gardens and land that forms part of the River Thames. The courts have held that the term 'land' extends to land covered by water and in coastal areas, it is generally accepted that planning control extends as far as the mean low water mark. As the following image illustrates, the application site is within the mean low water mark for the River Thames and so it is subject to planning control;



The River Thames is waterway used primarily for the purposes of navigation.

St Andrews Gardens is an open space used for recreational purposes, which would fall within Class F2(c) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

St Andrews Gardens contains St Andrews Quay, which comprises of 12 mooring bollards (6 x 10 tonne and 6 x 20 tonne) located on top of the river wall and three concrete access ramps located adjacent to the river wall. The central access ramp has a metal access platform which provides access to the LV21, a lightship that has been moored there since circa 2017. St Andrews Quay was installed in circa 2011 and the Port of London Authority has advised that the existing moorings at St Andrews Quay are used for temporary purposes only.

It is generally accepted that the use of the side of a navigable waterway, for the mooring of craft, in the course of navigation, is a use incidental to the primary use of the waterway (for navigation). Therefore, the use of the existing moorings at the application site for boats in the process of navigating the river would not constitute a material change of use.

The installation of the existing mooring bollards at the application site would have been engineering operations which would have required planning permission. No planning permission or lawful development certificate exists for these moorings but they appear to have been in place since 2011 (for the six 10 tonne bollards) and 2017 (for the six 20 tonne bollards). Therefore, as they have been in existence for a period in excess of four years, then no enforcement action may be taken against them.

The mooring of the LV21 at St Andrews Quay appears to be a permanent arrangement and appears to have been ongoing since circa 2017. However initially the Council was advised that whilst it might be in situ for long periods of time, it would move elsewhere along the Thames as art festival take place, although it has not changed location. The LV21 is used as an arts/cultural venue. As a permanent arrangement, the mooring of the LV21 is a material change of use of the land for which planning permission is required. No planning permission or lawful development certificate exists for the mooring of the LV21 and the vessel has not been in place for a period in excess of ten years. Therefore, this potentially unauthorised development will be reported to the GBC Planning Enforcement Team for investigation and will be considered separately to this application.

Would the proposal constitute a material change of use?

The proposed development would result in the Cervia being permanently moored at the application site in one of two locations. Furthermore, the Cervia would be used as a museum, which falls within Class F1(c) of the Town and Country Planning (Use Classes) Order 1987 (as amended). Therefore, in the context of the existing use of the application site (as a navigable waterway and for outdoor recreation), the proposed development would involve a material change of use, for which planning permission would be required (under section 55(1) of the Town and Country Planning Act 1990 (as amended)).

It is noted that there is no permitted change of use between Class F2(c) and Class F1(c) of the Town and Country Planning (Use Classes) Order 1987 (as amended).

It is also noted that the permitted development available under Article 2, Part 8, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) includes facilities for embarking and disembarking passengers at a dock, pier or harbour and the provision of services and facilities but as the applicant is not a statutory undertaker or a lessee/agent of development of such an undertaker, then he would not benefit from this use class.

Lastly, it should be noted that the proposed development would also involve the re-positioning of the LV21 vessel into one of two locations. This relocation would also require planning permission, as it would result in a material change of use. The existing temporary mooring use in either location would be replaced by a permanent mooring and the use of the boat would be as an arts/cultural venue not for navigation.

Would the proposal constitute operational development?

The proposed development would result in a number of permanent features being erected on or around the river wall. These include mooring bollards, utilities pillars and an extension to an existing access ramp and platform. These works would constitute engineering operations and as such, they would be operational

development, for which planning permission would be required (under section 55(1) of the Town and Country Planning Act 1990 (as amended)).

Conclusion

The proposed development would constitute a material change of use of the land and would involve operational development. Therefore, 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.

Recommendation: <u>Refuse</u> Lawful Development Certificate

The comments of the Port of London Authority, the Environment Agency and KCC Heritage can be brought to the attention of the applicant by way of informatives attached to the decision.

Case Officer:	Mrs Kelly Joyce	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	31st August 2023	Dated:	31 August 2023