

PLANNING STATEMENT

Prior Approval Application

Class MA, Part 3, Schedule 2, GPDO 2015, (as amended)

Change of use of undercroft of existing commercial building (Use Class E) to 10
residential flats (Use Class C3)

at

Joynes House, New Road, Gravesend, Kent DA11 0AJ

1.0 Introduction

- 1.1 This Planning Statement has been prepared on behalf of Joynes House Development Ltd to support a prior approval determination application under Class MA of the General Permitted Development Order (GPDO) 2015 for the change of use of the undercroft car park at the existing offices at Joynes house, New Road, Gravesend, to a total of 10 residential flats. This application follows previous prior approval applications (under both Class O and Class MA), relating to different floors but also a planning permission to convert the undercroft car park which was granted on 7 December 2023 under reference 20230612.
- 1.2 This current scheme for 10 flats proposes to replace the planning permission for the undercroft car park. The changes to the Class MA regulations has provided an opportunity to use permitted development rights for this element of the building as the floorspace restrictions under Class MA no longer apply. The scheme is the same as per the planning permission with the exception of amendments to the site plan including revised arrangements for bin storage, an indicative position for a sub-station and amendments to the parking layout.
- 1.3 The external alterations required to implement this current Class MA scheme have already been consented both through the undercroft planning permission but also through the external alterations planning permission 20221183 granted on 3 May 2022 and later amended by NMA reference 20231025 on 2 November 2023.
- 1.4 For the avoidance of doubt, to achieve the necessary external alterations to the undercroft, we will be implementing the external alterations permission reference 20221183 as later amended by NMA application reference 20231025, and as shown on drawing nos. 220301 001C and 220301 002D, not the undercroft planning permission 20230612.
- 1.5 The application is accompanied by the requisite plan drawings and information required under Paragraph W of the GPDO 2015 (as amended). The application is also accompanied by a Transport Statement and a Daylight Assessment.

Planning History

- 1.6 The previous Prior Approval determination applications granted under Class O of the GPDO for the change of use of the existing building from offices to a total of 65 flats were first approved on 16th September 2021 under the following planning application references:-
- 20210974 (26 residential units on part ground, first and second floors),
 - 20210962 (13 units on the third floor),
 - 20210973 (22 units on part-first, second and fourth floors), and
 - 20210958 (4 units on part-ground floor) on 16 September 2021.
- 1.7 Non-material amendments to the internal layout plans were later approved for each of the Class O approvals. (See ref 20220390, 2022391, 2022392 and 2022393). The number of flats consented however remained at 65 units.

- 1.8 Planning permission was granted on 3rd May 2023 for the external changes to the building's façade and fenestration to facilitate the consented Class O schemes (ref 20221183). This permission also consented other minor internal layout changes, including the relocation of the entrance foyer to lower ground level. Amendments to the façade/fenestration were subsequently approved under a non-material amendment (ref 20230822) granted on 25th August 2023, to facilitate the consented Class MA prior approval scheme and then again on 2 November under reference 20231025.
- 1.9 A Prior Approval application (ref 20221111) was approved on 5 December 2022 for an extension to the top of the building under Class AA, Part 20 of the GPDO to provide an additional 24 flats. This cannot be implemented due to structural constraints.
- 1.10 A planning application for the conversion of the undercroft car park to an additional 10 residential units was granted on 7 December 2023 under reference 20230612.

2.0 Class MA - Qualifications and Conditions

- 2.1 Class MA permits the change of use of buildings and any land in its curtilage from a use falling within Class E (commercial, business and service) to residential use within Use Class C3, subject to various qualifications, limitations and conditions, including the requirement to make a prior approval application to the Local Planning Authority (LPA) in respect of certain matters that can be assessed. Thus, as with its Class O predecessor, Class MA of the GPDO grants a deemed planning permission under Article 3 of the Order (ie not an exception under S55 of the TCPA). The prior approval application relates to the conditions stated in the Class. Class MA has been recently amended. As of 5 March 2024, the vacancy period and floorspace restrictions have been removed. This is reflected in the strikethroughs in the text below.
- 2.2 Development is not permitted under Class MA if any of the following apply:-

Development not permitted

MA.1.—

(1) Development is not permitted by Class MA—

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;

(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;

(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;

(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.

- 2.3 Paragraphs 9A and 9B of the GPDO requires development to meet the nationally described space standards (NDSS) and its associated notes.
- 2.4 Development under Class MA is permitted subject to a condition that before development begins, 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 the following matters:-
- Transport impacts of the development, particularly to ensure safe site access
 - Contamination risks in relation to the building
 - Flooding risks in relation to the building
 - Impacts of noise from commercial premises on the intended occupiers of the development
 - Provision of adequate natural light in all habitable rooms
 - [NB Other requirements of MA are not relevant as they only relate to buildings within conservation areas/where there will be a loss of nurseries/health care services/or where residential use will be impacted by general/heavy industry].
- 2.5 The procedural requirements for prior approval applications are set out in Paragraph W of the Order. It should be noted that only the specific requirements of Paragraph W can be insisted upon. In particular, the national and local validation checklists relevant to planning applications cannot be applied to prior approval applications under the GPDO. Furthermore, as set out in paragraph W - 10 (b) the LPA must

have regard to the NPPF, “so far as relevant to the subject matter of the prior approval, as if the application were a planning application”.

Dealing with Class MA applications where external alterations are required

- 2.6 It is also important to note that an application under Class MA, unlike some other classes within the GPDO, cannot deal with any necessary building operations associated with the change of use. Any such building operations which require planning permission must form part of a separate planning application and must be determined on its own planning merits in accordance with statute. The need for separate planning permission however does not disqualify a scheme from exercising permitted development rights under Class MA.
- 2.7 Furthermore, it is also well established that any associated planning application for associated external alterations can be submitted before, at the same time or after the prior approval application.
- 2.8 Both of the above principles are well-established and confirmed by the following:-
- National Planning Practice Guidance (NPPG) – see Paragraph 055 Reference ID: 13-055-2040306 (rev date 06 03 2014).
 - The Fee Regulations – Regulation 14 (1A) of the 2012 Fee Regulations provides for the submission of both prior approval and planning applications together (and indeed waives the fee for the prior approval when both are submitted in parallel). See Appendix A.
 - Appeal Decisions – for example, see below extract from. This relates to a Class O application but is equally applicable to Class MA.

Extract from appeal decision letter for APP/H5390/W/17/3187381

“30. Schedule 2, Part 3, Class O of the GPDO permits development consisting of the change of use of a building and land within its curtilage from office use to residential use. The Council is concerned that the alterations to the access and bin and cycle storage areas shown on the submitted drawings amount to operational development and are therefore not permitted by Class O of the GPDO.

31. I accept that permitted development under other classes of the GPDO also permit limited operational development alongside a change in use, whereas Class O of the GPDO does not. However, the need for operational development which would require planning permission is not listed as a disqualifying factor under Paragraph O.1 of Class O of the GPDO.

32. Furthermore, the PPG states where associated physical development is required to implement the change of use, developers should consider whether it constitutes development and should ensure they have planning permission if necessary. It does not specify when any such planning permission should be secured. Moreover, whilst Paragraph W(2)(b) of Schedule 2, Part 3 of the GPDO requires a plan indicating the site and showing the proposed development, it does not state whether or not any required operational development should be shown.”

- The High Court has reaffirmed this principle in *The King (LW Zenith Limited) v Secretary of State for Levelling Up, Housing and Communities v Hart District*

Council [2022] EWHC 3317 (Admin). The Judgment reminds us of some other basic principles with Prior Approvals:- A negative condition may be imposed on a prior approval, such as one preventing occupation before windows are installed. Furthermore that refusing permission on a planning ground capable of being dealt with by conditions risks an award of costs on the basis of unreasonable behaviour by a local planning authority.

- In the redetermined appeal relating to the above High Court case (APP/N1730/W/21/3278561), the Inspector concluded that “17. *The previous Inspector was not prepared to attach a condition requiring the completion of other consented development in its entirety as part of the prior approval process. However, in the judgment of the High Court, His Honour Judge Jarman KC opined that there was nothing in paragraph W(13) of the Order, or in the PPG, to prevent the imposition of a negatively worded condition, relating to occupation. I favour that approach and agree that such a condition would be reasonably related to the subject matter of the prior approval*”.

- 2.9 In accordance with the established principles set out above, the external alterations required to implement this proposed Class MA scheme have been the subject of a separate permission (ref 20221183) which have been later amended through a non-material amendment application (ref 20231025) dated 2 November 2023. The external alterations necessary to implement this Class MA will therefore be achieved through implementation of the aforementioned external alterations permission.
- 2.10 It is accepted that the external changes required to implement the prior approval scheme must be consented and implemented before the change of use permitted under Class MA can occur. As per the previous Class MA Prior Approval, this can be dealt with by planning condition.

3.0 Site and Surroundings

- 3.1 The application site is located in Gravesend Town Centre on the southern side of New Road, at its corner with Darnley Road.
- 3.2 The site is occupied by a purpose-built five storey office building constructed in the early 1970s. The principal elevation fronts onto New Road with pedestrian access via steps from New Road. The existing building is constructed in red brick with a flat roof. There are glazed fire escape staircases on both sides of the building which are painted in a dark grey colour.



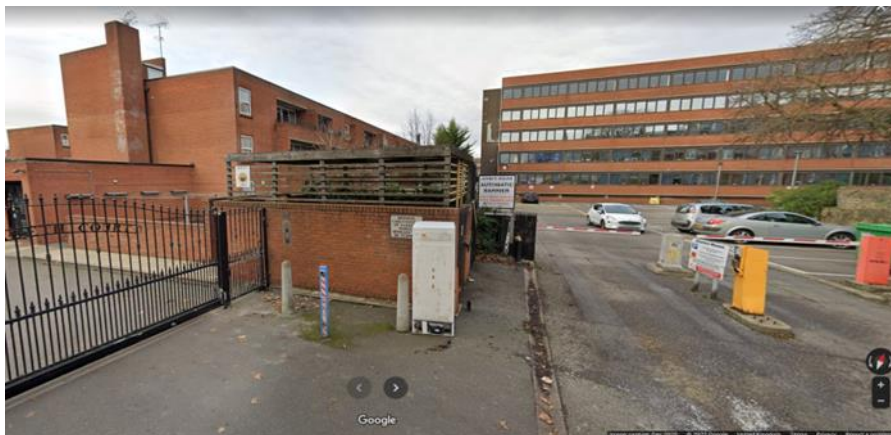
- 3.3 The site has a private car park to the rear, accessed from St James's Road. This also provides access down to the basement/undercroft car park via a ramp.



- 3.4 The site is bounded to the south by a large red brick building known as the Victoria Centre and currently home to the Gravesend Adult Education Centre.



- 3.5 To the west and lying at right angles to Joynes House at the rear is a block of residential properties (part of Elizabeth Court).



- 3.6 To the west and north of the site on the opposite side of New Road and Darnley Road are 2/3 storey buildings in commercial (retail) use at ground floor level with some residential uses above.
- 3.7 With regard to accessibility, the site lies less than 180m from Gravesend Train Station, with its high speed link to London St Pancras (journey time 24 minutes). The A2/M2 lies 2.6 miles to the west.
- 3.8 Gravesend town centre is located to the north and east of the site with its extensive facilities and amenities. As well as the railway station, there are bus stops along New Road and Darnley Road with bus services to Sevenoaks, Chatham, Rochester, Dartford, Ebbsfleet and Blue Water (Shopping Centre). The site also has good accessibility for pedestrians and cyclists.

4.0 The Proposals

- 4.1 This application under Class MA seeks to replicate the scheme that has been granted planning permission.
- 4.2 The proposals are to convert the existing undercroft car park to provide 10 no. 1 bed flats. Internally each of the proposed flats will comprise an open plan kitchen/lounge/dining space with a separate bedroom. The 1b1p flats will have a GIA of at least 38sqm and the 1b2p flat will have a GIA of 50 sqm. All units will comply with the nationally described space standards in terms of floorspace, storage, bedroom dimensions and floor to ceiling heights and with the Building Regulations Part M4 (2) and (3). (See separate Space Standards document).
- 4.3 The lower ground floor plan also shows ancillary communal space for residents, along with a plant room.
- 4.4 The existing car park with 66 parking spaces will provide sufficient parking spaces for the proposed residential flats subject to this application, as well as to the other consented schemes and proposed schemes. Policy-compliant cycle storage is also provided.

5.0 Assessment against the GPDO 2015

- 5.1 The following assesses the proposals against Class MA of the GPDO 2015 (as amended).

Qualifications/exclusions

- 5.2 There is no longer a requirement to demonstrate 3 months' vacancy as required by Paragraph MA.1.(1a).
- 5.4 There is no longer a requirement to demonstrate compliance with the 1,500sqm floorspace threshold under paragraph MA.1.(1c) .
- 5.5 The site is not, nor forms part of, a SSSI, a listed building or its curtilage, a Scheduled Ancient Monument, a military explosives storage area or a safety hazard area and therefore complies with MA.1. (1d)
- 5.6 The site does not lie within an AONB, National Park, World Heritage Site or Wildlife Area or The Broads. Therefore the application complies with MA.1. (1e).
- 5.7 The site is not occupied under an agricultural tenancy and therefore the application complies with MA.1. (1f).
- 5.8 The site is not covered by an Article 4 Direction.
- 5.9 There are no restrictive planning conditions nor S106 obligations that would prevent permitted development rights under Class MA from being exercised. This was acknowledged in the previous Class O prior approval determinations.
- 5.10 The proposals meets the nationally described space standards and therefore complies with Article 3, Paragraphs 9a and 9b of the GPDO. (See Spaces Standards document).

Assessment of Transport and Highway risks

- 5.11 The NPPF (2023) states in Paragraph 115 that *“development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”*.
- 5.12 The Transport Statement accompanying this application acknowledges that this is a highly accessible location within the heart of Gravesend Town Centre and close to extensive amenities, facilities and transport links.
- 5.13 The Statement goes onto explain that if all of the permissions/approvals relating to this site are implemented then the site has the potential to accommodate 110 units. The cycle parking provision will be policy compliant being in accordance with both the adopted and emerging cycle parking standards, with one cycle parking space provided per unit provided in the proposed cycle store. A planning condition requiring the provision and subsequent retention of cycle parking spaces would therefore be appropriate and acceptable. With regard to car parking, as part of the wider scheme, a total of 66 car parking spaces will be available. This is in accordance with the projected demand, as well as falling within the maximum policy requirements of 110 car parking spaces (based on the implementation of all consents).
- 5.14 There are therefore no reasons to require prior approval of highway impacts. If Prior approval is deemed to be required, there is no reason to withhold it on highway/transport grounds.

Assessment of Contamination Risks

- 5.15 There is no evidence that the site has been determined as likely to be contaminated under the Environmental Protection Act 1990, or when taking into account the Contaminated Land Statutory Guidance issued by the Secretary of State for the Environment, Food and Rural Affairs in April 2012. There has been no change of circumstances since the previous Class O and Class MA prior approval schemes where the Council considered that there were no implications for contamination.
- 5.16 There is therefore no reason to come to a different conclusion for this application and no reason why prior approval should be refused on the grounds of contamination risks.

Assessment of Flood Risks

- 5.17 The site falls within Flood Zone 1 and in an area of low flood risk. There is therefore no reason to require prior approval of flood risk. This was accepted as part of the previous Class O Prior Approval determinations and the more recent Class AA prior approval scheme.



Source: Environment Agency Flood Map for Planning

Assessment of Noise Impacts (from commercial premises on future occupants)

- 5.18 The GPDO 2015 (as amended) spells out that the assessment of noise is restricted to those impacts from commercial premises. Noise from traffic is not for consideration. The application site lies within a mixed residential and commercial area. The previous Class O Prior Approval applications were supported by an acoustic report which concluded that the primary source of noise was from road traffic. The Council agreed with this analysis, commenting in the Officer's Report as follows:-

"As the primary source is noise from roads and not commercial premises prior approval is not required for noise"

- 5.19 The noise environment for this Class MA application is identical to that assessed previously and therefore there is no justifiable reason to refuse the application on noise impact grounds.

Assessment of Adequate Natural Light

- 5.20 The requirement to assess natural light was inserted into the GPDO by the T&C PI (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 and came into effect on 1 August 2020. Criterion 1(f) requires *"the provision of adequate natural light in all habitable rooms of the dwellinghouses"*. Habitable rooms are defined within the GPDO as meaning:- *"any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms"*
- 5.21 All habitable rooms within the proposed scheme will have at least one window. The accompanying Daylight Assessment demonstrates all habitable rooms will have adequate daylight. As set out above, it is acknowledged that for some units/rooms, this will be in-part reliant upon alterations to the fenestration. It is accepted that it will be necessary to impose a planning condition to ensure that the residential units are not occupied unless and until any necessary external works have been duly implemented.

- 5.22 This approach is widely used and has been endorsed by the High Court in the 2022 Judgment in *The King (LW Zenith Limited) v Secretary of State for Levelling Up, Housing and Communities v Hart District Council* [2022] EWHC 3317 (Admin), as noted above in paragraph 2.7.

6.0 Conclusion

- 6.1 Given the above, the application meets all tests set out in the GPDO 2015 (as amended) and thus there is no reason why Prior Approval should be withheld.

Report prepared by:-

Ruth Harding (Director – Gemini Planning Services Ltd)

Date: March 2024

