

PD14742/LT/RF
Email: lucy.turner@montagu-evans.co.uk
Ross.fraser@montagu-evans.co.uk

70 St Mary Axe
London
EC3A 8BE
Tel: +44 (0) 20 7493 4002

Gravesham Borough Council
Planning Department
Civic Centre
Gravesend
DA12 1AU

05 December 2023

Dear Sir / Madam,

**APPLICATION UNDER SECTION 192 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
CERTIFICATE OF LAWFUL USE (PROPOSED DEVELOPMENT) FOR REMOVAL AND RECONFIGURATION OF
MEZZANINE FLOOR
UNIT C, IMPERIAL RETAIL PARK, GRAVESEND, DA11 0DQ**

On behalf of Box+III Gravesend Limited ('the Applicant'), the owners of Imperial Retail Park, we apply for a Certificate of Lawfulness of Proposed Use or Development ("CLOPUD") under Section 192 of the Town and Country Planning Act 1990 (as amended) in respect of proposed operations at Unit C, Imperial Retail Park in Gravesend ('the Site'). The application seeks confirmation that the removal and reconfiguration of existing mezzanine floorspace at the Site, totalling 449.2 sq. m, to provide a new mezzanine floor of 449.2 sq. m would be lawful.

The application has been submitted via the Planning Portal, under reference PP-12634616, and comprises the following documents:

- This covering letter, dated 05 December 2023;
- The completed application form, dated 05 December 2023;
- Drawing Ref: IRP-UC-SLP-001 – Location Plan;
- Drawing Ref: URB UC 08 01 06 D00 – Mezzanine as Existing; and
- Drawing Ref: URB UC 08 01 07 D00 – Mezzanine as Proposed.

The application has been submitted via the Planning Portal (Ref: PP-12634616) and the fee of £117.00 has been calculated in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Request for Site Visits) (England) Regulations 2012 (as amended), and paid via the Planning Portal.

APPLICATION SITE

The application site comprises Unit C at the Imperial Retail Park in Gravesend, which has approximately 928 sq. m of floorspace at ground floor, with a trading mezzanine floor of 449.2 sq. m. The Unit is currently vacant, having previously been occupied by Bensons for Beds, prior to their closure in 2021. The Unit is currently subject to a planning application to enable the ground floor only to be used as a foodstore, in addition to its current non-food retail use (LPA Ref. 20231078).

The Site is a well-established out-of-centre retail destination, which is well served by the highway network and public transport. The Site is very well connected to Gravesend Town Centre, being just a 10 minute walk away.

The full extent of the Site is outlined in red on the submitted Drawing Ref: IRP-UC-SLP-001 – Location Plan.

THE PROPOSED CERTIFICATE

The purpose of the proposed Certificate is to allow the Applicant to remove and reconfigure the existing mezzanine within Unit C.

There will be no increase in the level of floorspace, as both the existing and proposed mezzanine measure 449.2 sq. m in size; it merely changes its configuration as shown on the accompanying plans.

LEGISLATIVE CONTEXT

Section 192 (1) of the Town and Country Planning Act 1990 (as amended) (the Act) states:

“If any person wishes to ascertain whether –

- a) any proposed use of buildings or other land; or*
- b) any operations proposed to be carried out in, on, over or under land,*

would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.”

Section 192 (2) states:

“If, on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect...”

The operations subject to this application do not require planning permission (and are lawful) as they do not constitute development under Section 55 of the Act.

Section 55(2)(a) of the Act states that

“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

- (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—*
 - (i) affect only the interior of the building, or*
 - (ii) do not materially affect the external appearance of the building”.*

Articles 44 (1) and (2) of the Town and County Planning (Development Management Procedure) (England) Order 2015 confirms that:

(1) The amount specified under section 55(2A) of the 1990 Act (meaning of “development” and “new development”)(1) is 200 square metres.

(2) The circumstances in which section 55(2) of the 1990 Act does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the floor space of the building by more than 200 square metres are that the building is used for the retail sale of goods other than hot food.

THE CURRENT APPLICATION

The current application seeks confirmation that the removal and reconfiguration of the existing mezzanine within Unit C would be lawful. The reconfiguration will result in no change in total floor area of the mezzanine. For the reasons set out below, this does not comprise development requiring a separate permission.

The layout of the existing and proposed mezzanines are clearly set out on Drawing Ref: URB UC 08 01 06 D00 – Mezzanine as Existing; and Drawing Ref: URB UC 08 01 07 D00 – Mezzanine as Proposed, submitted in support of this application. This clearly shows that there will not be any additional floorspace created as a result of the reconfiguration.

IMPLICATIONS OF REVISED MEZZANINE FLOORSPACE

Section 57 of the Town and Country Planning Act 1990 (as amended) states that planning permission is required to carry out development of land. Section 55 (1) of the Act defines “development” as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any building or land.

However, the provisions of Section 55 (1) are limited by the subsequent Section of the Act (55(2)(i)) which states that the carrying out for maintenance, improvement or other alterations of any building or works which affect only the interior of the building shall not be taken to involve development of the land. Therefore, whilst the provisions of mezzanine floors are building operations, as they only affect the interior of a building, they do not generally constitute development.

Section 49 of the Planning and Compulsory Purchase Act 2004 introduced a new provision to Section 55 of the 1990 Act, known as 2A. This enables the Secretary of State to bring forward a Development Order specifying any circumstances in which subsection 2 (a) of Section 55 does not apply.

SI 2006/1062 was made 5 April 2006 and, in respect of mezzanine floors, came into force on 10 May 2006. It inserts Article. 2A in respect of the meaning of development, and states that the amount specified under Section 55 (2A) of the Act is 200 sq. m. In other words, it had the effect of requiring planning permission to be obtained for operations which have the effect of increasing the gross floorspace of a building used for the sale of goods by more than 200 sq. m.

THE GROUNDS FOR THE APPLICATION

It would be lawful to remove and reconfigure the existing mezzanine floor within Unit C to the layout which is now proposed. The legislative changes only apply to works which increase the floorspace by more than 200 sq. m of retail floorspace. The reconfiguration of the mezzanine floor does not increase its floor area at all; it merely changes its configuration.

It follows that such works are internal to a building and do not affect its external appearance, planning permission is not required.

SUMMARY AND CONCLUSION

This application seeks confirmation that the removal and reconfiguration of the existing mezzanine floorspace within Unit C would be lawful. The reconfiguration would not increase internal floorspace, and therefore is not subject to the legislative restrictions summarised above. For the reasons contained within this letter, we confirm that the removal and reconfiguration of mezzanine floorspace would be lawful and a Certificate under Section 192 of the Act should be granted on this basis.

We trust that you have sufficient information to consider this application and to issue a Certificate of Lawfulness in due course. However, please contact either Ross Fraser (07920 206 216 / ross.fraser@montagu-evans.co.uk) or Lucy Turner (0207 312 7532 / lucy.turner@montagu-evans.co.uk) should you require any further information.



MONTAGU EVANS LLP

Enc.