



Delegated Report

Prior Approval

Application No:	20240688
Location:	12A The Parade, Valley Drive, Gravesend, Kent, DA12 5RT
Description:	Application to determine if prior approval is required for a proposed; change of use from 1 two bed dwelling into two studio flats (Class C3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class G.
Applicant:	Mr Berger

Procedural Issues

In determining a prior approval application, the Local Planning Authority (LPA) is not granting a planning application; it is simply deciding whether its prior approval is required in respect of the specified matters only. Consequently, the LPA is not able to take into account other considerations that it would be able to consider were it determining a planning application e.g. amenity space.

Proposal

This application is for determination as to whether prior approval for the change of use of from 1 two bedroom dwelling into two studio flats (Class C3) under Schedule 2, Part 3, Class G of the Town and County Planning (General Permitted Development) (England) Order as amended.

Relevant Planning History

Reference	Description	Decision	Decision Date
20070858	Display of a box sign with internally illuminated lettering above fascia level on the front elevation; a box sign with internally illuminated lettering at first floor level on the side elevation; an internally illuminated 'Cash' machine sign hanging below the front canopy and signage to the atm.	PERMITTED	19.11.2007
20070531	Change of use of shop to a restaurant incorporating the installation of an external ventilation extraction duct on the roof and installation of a new shop front.	PERMITTED	24.09.2007

Submitted Documents/Plans

- Application Form – 18 July 2024;
- Supplementary Information – Email from Agent as evidence (dated – 17 September 2024);
- Supplementary Information – Bexley Council Decision Notice (24/02012/PRIORM);
- Drawing no. E00 – Site Location Plan and Existing Block Plan;
- Drawing no. E01 – Existing Floor Plans;

- Drawing no. E02 – Existing Elevations (Front and Rear);
- Drawing no. E03 – Existing Elevation (Side – Right);
- Drawing no. E04 – Existing Elevation (Side – Left);
- Drawing no. E05 – Existing Section A-A;
- Drawing no. P01 – Proposed Floor Plans;
- Drawing no. P02 – Proposed Elevations (Front and Rear);
- Drawing no. P03 – Proposed Elevation (Side – Right);
- Drawing no. P04 – Proposed Elevation (Side – Left);
- Drawing no. P05 – Proposed Section A-A.

Consultations, Publicity and Representations

Internal Consultees

GBC Environmental Protection (Regulatory Services) –

The proposal introduces an additional dwelling into the property and also places the bedroom area immediately above a commercial premises (shown on Google Maps as a KFC restaurant/takeaway). Currently, the floor above is a living area and kitchen. In this respect, noise transference internal through the floor/ceiling partition between the ground and first floor is a potential problem and needs to be considered. In addition, Google Maps also shows a kitchen extract flue externally on the left hand side of the building up to eaves levels and also an externally mounted condenser unit. The property is also adjacent to a supermarket which is also likely to have plant/equipment associated with it. Noise from these commercial sources also needs consideration by way of a noise impact assessment.

To address the above and other matters, the following conditions are recommended.

Noise Control – Existing Plant and Equipment

Prior to commencement, a noise impact assessment to assess noise from external plant and equipment shall be carried out and submitted to the LPA for approval demonstrating that:

- *The internal ambient noise levels in all habitable rooms of the proposed residential dwellings shall not exceed the guideline LAeq values found in Table 4 of BS8233:2014.*
- *The maximum internal noise levels in all habitable rooms should not exceed 45dB Lmax more than 10 times per night in accordance with the Professional Practice Guidance on Planning & Noise and the WHO Guidelines for Community Noise.*

Sound Insulation – Conflicting Uses

Where there are unavoidable conflicting room uses between floors, an enhanced scheme of sound insulation shall be submitted for approval to prevent a nuisance from airborne and impact noise from the commercial use affecting the occupants of the dwelling above.

This impact assessment and evaluation and selection of the mitigation scheme shall be undertaken by a competent person and submitted in writing for approval to the local planning authority.

Prior to operation a post completion noise survey must be undertaken by a suitably qualified acoustic consultant, and a report submitted to and approved in writing by the Local Planning Authority. The post completion testing shall assess performance of the noise mitigation measures against the noise levels as set in the Report. Any agreed mitigation must be installed and maintained thereafter.

The effectiveness of the schemes will also be dependent on the degree of workmanship representative post-completion testing.

Neighbouring properties

A notice was displayed on site 06 August 2024.

In addition, six surrounding properties were consulted and one representation was received. The neighbour representations was neutral, neither objecting to or supporting the proposal, stating that they do not wish for the development to cause any disturbance or safety issues for their premises.

The consultation period expired 30 August 2024.

Officer's Analysis

This application seeks determination pursuant to Article 3, Schedule 2, Part 3, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) as to whether Prior Approval is required in respect of the proposed change.

Assessment

Class G – commercial, business and service or betting office or pay day loan shop to mixed use

Permitted development

G.– Development consisting of a change of use of a building—		
(a)	from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats;	N <i>see assessment below</i>
(c)	from a use within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order, to a mixed use for any purpose within Class E (commercial, business and service) of Schedule 2 to that Order and as up to 2 flats;	N/A <i>not in use as a betting office / pay day loan shop</i>
(e)	from a use falling within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order to a mixed use falling within article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of the Use Classes Order and as up to 2 flats.	N/A <i>not in use as a betting office / pay day loan shop</i>

Class G (a) – Assessment

The application site is a mixed use building containing a commercial unit on the ground floor and a separate self contained two bedroom flat above. Therefore, the property contains two separate planning units with independent access and the application seeks to subdivide the existing flat into two studio apartments.

In *Valentino Plus Limited v. Secretary of State for Communities and Local Government* [2015] EWHC 19 (Admin) (Appendix 1) it was held that the correct interpretation of Class F (which was a previous incarnation of the current Class G) “*permits a change from a single planning unit to up to three planning units, that is to say one in A1 (now E) use and two flats*” (see paragraph 17 of the judgment). Therefore, given that the building is in mixed use and contains two separate planning units, the proposed subdivision of the existing flat fails to meet the requirements of Class G and prior approval is refused.

Further appeal decisions follow the same trend as Appendix 1, with Inspectors concluding that the building must be within a sole commercial use, with the upper floors ancillary storage associated with the ground

floor use. The appeals, similar to the Valentino Plus Limited case, related to the previous incarnation of Class G (Class F), however remain relevant. To summarise the dismissals, the Inspectors all considered that buildings already containing both Class E and Class C3 are not permitted development for the increase in residential units. These appeals are as follows:

- APP/G5750/X/13/2202687 - 53 West Ham Lane, London, E15 4PH (Appendix 2)
- APP/C5690/X/13/2208218 - 10 Dartmouth Road, London, SE23 3XU (Appendix 3)
- APP/Y5420/X/14/2216168 - 614a Lordship Lane, London, N22 5JH (Appendix 4)

The agent was contacted regarding the proposal, and it was agreed that the determination date for the application be extended to allow for the submission of a statement of evidence that Class G does not preclude further conversion of a building in mixed up to the maximum two flats. This approach is positive and proactive, in accordance with Article 35 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), and paragraph 38 of the National Planning Policy Framework (NPPF) 2023.

The evidence provided by the agent was a statement in an email and a decision notice from Bexley Borough Council. The email statement did not include any appeals or case law, and is therefore considered to be a statement of opinion. The decision notice from Bexley was for a similar development, with a building containing a Class E unit on ground floor with a residential flat on the first and second floors. However from undertaking our own research of other Kent Authorities, we are satisfied that the Bexley example is an anomaly and the approach that the whole unit must be Class E, is the correct assessment.

Notwithstanding the statement and decision notice submitted by the agent, the Local Planning Authority consider our own research, case law and appeal evidence tip the balance and are conclusive that the proposal is not permitted development and planning permission for the conversion of the flat into two units is required.

Conditions of Class G

G.1. Development permitted by Class G is subject to the following conditions—

- (a) some or all of the parts of the building used for a use within, as the case may be, article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of, or Class E of Schedule 2 to, the Use Classes Order is situated on a floor below the lowest part of the building used as a flat;*
- (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat;*
- (c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)—*
 - (i) by a single person or by people living together as a family, or*
 - (ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents).;*
- (d) before beginning development, 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—*
 - (i) contamination risks in relation to the building;*
 - (ii) flooding risks in relation to the building;*
 - (iii) impacts of noise from commercial premises on the intended occupiers of the development;*
 - (iv) the provision of adequate natural light in all habitable rooms of the dwellinghouses;*
 - (v) arrangements required for the storage and management of domestic waste.*

The following paragraphs (d) will assess the relevant prior approval matters.

It is noted that according to paragraph W(10) of the GPDO, when determining a prior approval application, the Local Planning Authority must have regard to the NPPF (2023) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. Therefore, the following discussion will refer to the NPPF (2023) and not refer to local development plan policies.

Even though the proposed development is not permitted development, as concluded above, and fails to meet the requirements of Class G of the GPDO, the below prior approval matters are assessed with brief comments from the Local Planning Authority.

- (d)(i) Contamination risks in relation to the building – The application building could have the potential for contaminates. However, Gravesham's Environmental Protection raised no concern with contamination and prior approval would not therefore be required.
- (d)(ii) Flooding risks in relation to the building – The site is located in flood zone 1 which has a low probability of flooding. Given that the site is located within the lowest Flood Zone with an extremely low risk of flooding. Prior approval would not therefore be required in relation to flood risk.
- (d)(iii) Impact of noise from commercial premises on the intended occupiers of the development – The ground floor unit is in use as a KFC restaurant/takeaway. Gravesham's Environmental Protection Team have expressed concerns with the impact on amenity and requested conditions (see comments above), therefore prior approval would therefore be required noise impact.
- (d)(iv) Provision of adequate natural light in all habitable rooms of the dwellinghouses – The habitable rooms within the development are served by windows and would receive adequate natural light.
- (d)(v) Arrangements required for the storage and management of domestic waste – The plans do not include any waste or bin provision for either the Class E unit or the proposed flats above. Therefore, prior approval would be required for waste storage and management.

Conclusion

The application fails to meet the criteria as set out in Part 3, Class G of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

The site is in mixed use with a Class E commercial unit on ground floor only, with a residential C3 dwelling above, therefore, the building contains two separate planning units and does not fall within Class E of the Use Class Order and does not meet the requirement of Class G(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Therefore, the proposal is not permitted development, prior approval is refused and planning permission is required for the subdivision of the flat.

Recommendation

Prior Approval is Refused

(For detailed reasons for refusal and informatives, see draft Decision)

Case Officer:	Mr Ethan Bonthron	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	

Dated:	24 th September 2024	Dated:	25 September 2024
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