



Delegated Report

Prior Approval

Planning Application No: 20241004

Location: First And Second Floors 20 Queen Street Gravesend Kent

Description: Application to determine if prior approval is required for a proposed:
Change of use from HMO to 3 bed flat, of the Town and Country Planning
(General Permitted Development) (England) Order 2015 (as amended) -
Schedule 2, Part 3, Class G.

Applicant: Mr Singh

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 from HMO to 3 bed flat, under Schedule 2, Part 3, Class G of the Town and County Planning (General Permitted Development) (England) Order as amended.

Submitted Documents/Plans

Application Form

829-5 Rev A – Site Plan Existing and Proposed

829-01 Rev A – Existing Layout – Ground, First and Second Floors

829-02 Rev A – Existing Elevations

829-3 Rev A – Existing and Proposed Elevations

Relevant Planning History

Reference	Description	Decision	Decision Date
20131042	Retention of the first and second floors as a one bed self contained flat and rooms comprising a house of multiple occupation for four persons.	Permitted	26.03.2014
20130784	Conversion of accommodation ancillary to cafe use on ground floor to a self contained studio flat involving internal alterations to layout.	Permitted	22.10.2013
20101078	Retention of attached store building as residential accommodation ancillary to the cafe use.	Permitted	05.01.2011
20030946	Conversion of the first and second floors into two self-contained flats involving the erection of a rear infill extension at second floor level and installation of a new	Permitted	19.01.2004

	shopfront to incorporate separate entrance door to the proposed flats.		
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Consultations, Publicity and Representations

Consultees

Ward Councillors

No comments received.

GBC Environmental Protection Officer

No consideration has been made for any potential noise from the kitchen extract system for the food premises below the proposed flat. Google maps also indicates a food premises at the adjacent property (no 22) and the rear elevation plans indicate 2 flues at the back of the building. Noise from both of these needs to be considered to ensure that there is compliance with the internal noise levels specified by BS8233:2014.

A noise impact assessment will therefore be needed to assess this noise and also any other noise source in the area. This area can be subjected to quite a lot of noise from the late-night economy so this should also be considered. To address this, the following condition is recommended.

Noise Control

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 L_{Amax} more than 10 times per night in accordance with the Professional Practice Guidance on Planning & Noise and the WHO Guidelines for Community Noise.

KCC Highways Officer

Referring to the above description, it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

It is important to note that Local Planning Authority (LPA) permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because LPA planning permission has been granted.

For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture or landscape assets such as grass, shrubs and trees, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens and near the highway that do not look like roads or pavements but are actually part of the public highway.

Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a pre-application advice service in addition to a full formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. Further details are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>.

This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process. Further details on this are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/apply-for-a-dropped-kerb/dropped-kerb-contractor-information>

Once planning approval for any development has been granted by the LPA, it is the responsibility of the applicant to ensure that before development commences, all necessary highway approvals and consents have been obtained, and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority.

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Further guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

Environment Agency

We have no comments to make on this planning application as it falls outside our remit as a statutory planning consultee. Please refer to the attached 'When to consult the Environment Agency' document for guidance on when to consult us.

Non planning consents

Although we have no comments on this planning application, the applicant may be required to apply for other consents directly from us. The term 'consent' covers consents, permissions or licenses for different activities (such as water abstraction or discharging to a stream), and we have a regulatory role in issuing and monitoring them.

The applicant should contact 03708 506 506 or consult our website (<https://www.gov.uk/guidance/check-if-you-need-an-environmental-permit>) to establish whether a consent will be required.

Neighbouring properties

A notice was displayed on site 11th November 2024. 0 comments were received from members of the public.

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;	<u>N</u> <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;	<u>N/A</u> <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.	<u>N/A</u> <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 HMO use in the floors above. Therefore, the property contains two separate planning units with independent access and the application seeks to convert the existing 3 bedroom HMO into a 3 bedroom flat.

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 has not included any supporting documentation which would provide any case law, which would contradict this assessment. It is therefore, 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 (2024) 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 (2024) 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 would likely not have the potential for contaminates. Gravesham's Environmental Protection raised no concern with contamination and prior approval would not therefore be required in relation to this matter.
- (d)(ii) Flooding risks in relation to the building – The site is not located in a flood zone and so has a low probability 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 cafe. Gravesham's Environmental Protection Team have expressed concerns with the impact on amenity and requested conditions (see comments above), therefore prior approval would be required in relation to 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 HMO 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:	Mrs Lisa Fisher	Team Leader:	Richard Hart
Signed:		Signed:	
Dated:	19th December 2024	Dated:	19th December 2024