



Delegated Report

Lawful Development Certificate (Existing)

Application no:	20250301
Location	Gravesham Community Hospital, Bath Street Gravesend Kent
Proposal:	Application for an Existing Lawful Development Certificate in respect of demolition works constituting implementation of Planning Permission Reference number 20190504 for the Conversion of existing building with an 11 storey side extension and a single storey roof extension, the construction of a new residential building ranging from 3-6 storeys to provide 115 residential units consisting of 47 one bed units, 59 two bed units and 9 three bed units, together with associated parking for 69 cars, 6 motorcycles and 212 cycles, amenity space, private gymnasium and waste and a B1, D1 and D2 flexi use space and amendments and substitution to approved plans.
Applicant:	c/o Agent
Site Visit	N/A Desktop Assessment

Plans & Documents

Covering letter
Application form
Statutory Declaration
Legal Opinion
Drawing no. 2244_0900 rev A (sitewide ground floor plan proposed)
Drawing no. 2244_0901 rev A (sitewide first floor plan proposed)
Drawing no. 2244_0920 rev A (ground and first floor plan consented)
Drawing no. 2244_0930 rev A (tenth and roof plan consented)
Drawing no. 2244_0928 rev A (eight and ninth floor plan consented)
Drawing no. 2244_0926 rev A (sixth and seventh floor plan consented)
Drawing no. 2244_0924 rev A (fourth and fifth floor plan consented)
Drawing no. 2244_0922 rev A (second and third floor plan consented)
Drawing no. 2244_0915 rev A (site location consented and proposed)
Drawing no. M-B-P3 rev B (existing ground floor and first floor plan)
Drawing no. M-B-P6 rev B (existing sixth and seventh floor plan)
Drawing no. M-B-P5 rev B (existing fourth and fifth floor plan)
Drawing no. M-B-P4 rev B (existing second and third floor plan)

Property Type

The application site is a derelict hospital located in Gravesend Town Centre.

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Relevant Planning History

20250112	Application for a non-material amendment to planning permission reference number 20220915 to allow amendments to the trigger point associated with Conditions 5, 7, 8, 9, 10 and 11.	Under consideration	
20241124	Application for the variation of conditions 5, 7, 9, 10 and 11 attached to planning permission reference number 20220915 for application for a minor material amendment to planning permission reference no. 20190504 (following planning permission reference no. 20220487 for non-material amendment to allow the change of description to: Conversion of existing building with a side extension and a roof extension, the construction of a new residential building to provide residential units (class C3) consisting of one bed, two bed and three bed homes, together with associated car parking, motorcycle and cycles spaces alongside amenity space, private gymnasium and waste and space in Class E as flexi use space) to allow: amendments to Block M only (conversion building), including amendments to unit mix, internal layouts and parking, introduction of additional private and shared amenity space, elevational changes and amended material palette; to allow the earlier start on site and delivery by amending the trigger points for pre-commencement conditions.	Under consideration	
20241118	Application for the approval of conditions 3 (Code of Construction Practice), 4 (Details of Construction Compound), 6 (Wheel Washing)	Details approved	31.01.2025

and 12 (Phasing Plan) attached to planning reference number 20220915.

20220915	Application for a minor material amendment to planning permission reference no. 20190504 (following planning permission reference no. 20220487 for non-material amendment to allow the change of description to: Conversion of existing building with a side extension and a roof extension, the construction of a new residential building to provide residential units (class C3) consisting of one bed, two bed and three bed homes, together with associated car parking, motorcycle and cycles spaces alongside amenity space, private gymnasium and waste and space in Class E as flexi use space) to allow: amendments to Block M only (conversion building), including amendments to unit mix, internal layouts and parking, introduction of additional private and shared amenity space, elevational changes and amended material palette.	Permitted	25.11.2022
20220487	Application for non-material amendment to planning permission reference number 20190504 to allow the change of description to: Conversion of existing building with a side extension and a roof extension, the construction of a new residential building to provide residential units (class C3) consisting of one bed, two bed and three bed homes, together with associated car parking, motorcycle and cycles spaces alongside amenity space, private gymnasium and waste and space in Class E as flexi use space.	Permitted	26.05.2022
20190504	Conversion of existing building with an 11 storey side extension and a single storey roof extension, the construction of a new residential building ranging from 3-6 storeys to	Permitted	17.02.2022

provide 115 residential units consisting of 47 one bed units, 59 two bed units and 9 three bed units, together with associated parking for 69 cars, 6 motorcycles and 212 cycles, amenity space, private gymnasium and waste and a B1, D1 and D2 flexi use space.

Consultations

As this is an application for a lawful development certificate, consultations are not required; however, one response has been received from the Kent Police's Designing Out Crime Officer and is appended at Appendix 1. The comments received relate to incorporating Secured by Design guidance to address community safety and design out crime. The comments do not address the Lawful Development Certificate application

Officer Assessment

This application is made under the provisions of section 191 (1c) of the Town and Country Planning Act 1990 which states:

191 (1) If any person wishes to ascertain whether—

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

As set out in the Covering Letter accompanying the application, the applicant seeks to ascertain whether operations carried out in, over, or under the land are lawful within the specific scope of planning permission granted under planning application reference 20220915, thereby seeking confirmation that planning application reference 20220915 has been lawfully implemented.

The applicant is of the opinion that the development granted permission under reference 20220915 has been implemented lawfully, as works commenced prior to the expiration of the consent, which was 17 February 2025. The description of the development approved is:

'Application for a minor material amendment to planning permission reference no. 20190504 (following planning permission reference no. 20220487 for non-material amendment to allow the change of description to: Conversion of existing building with a side extension and a roof extension, the construction of a new residential building to provide residential units (class C3) consisting of one bed, two bed and three bed homes, together with associated car parking, motorcycle and cycles spaces alongside amenity space, private gymnasium and waste and space in Class E as flexi use space) to allow: amendments to Block M only (conversion building), including amendments to unit mix, internal layouts and parking, introduction of additional private and shared amenity space, elevational changes and amended material palette.'

Condition 1 states:

The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the original permission 20190504 was granted (17 February 2022).

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

The applicant's stance is that operations were commenced on site in accordance with the approved layout, following the demolition of a detached building prior to this date; however, some pre-commencement conditions had not been discharged in accordance with the requirements of the decision notice for 20220915.

These pre-commencement conditions were subject to a live application to vary the triggers but these applications were not determined prior to the expiry date and remain as pending determination.

The purpose of this application is for the following:

- a) It presents evidence that material operations were undertaken on site prior to the expiry of permission 20220915 (before 17th February 2025).
- b) It seeks confirmation that, as identified in the submitted Legal Opinion on behalf of the applicant, pre-commencement conditions 5, 7, 8, 9, 10 and 11 are process conditions and do not go to the heart of the permission. In addition, these conditions are proposed to be varied through minor amendments to the wording within two live applications – a S.73 application (20241124) and a non-material amendment application (20250112). Both applications were submitted prior to the expiry of Permission 20220915. Both applications remain pending determination.
- c) With the above points considered, the applicant seeks confirmation that planning permission 20220915 has been lawfully implemented. In the applicant's view, this status will allow the conditions associated with the permission to be amended and a decision to be issued on both live applications (20241124 and 20250112), as the planning permission 20220915 will have the status of being implemented, rather than expired.

The structure that has been demolished is the 'engine room' building. The applicant's state this was demolished on 15 February 2025. A statutory declaration is provided by Simon Taylor the Development Director of Strawberry Star Group. As part of the declaration, Mr Taylor states, *"I instructed the demolition contractor, DDS Group Limited, to demolish a building known as the Engine Room, and also referred to as "Building B2", in some of the documentation associated with the Planning Permission at the Property... DDS Group Limited duly demolished this building on 15 February 2025. There is produced to me now, marked "ST7", a series of five photographs which I took showing the demolition works taking place that day."* The Council's Planning Enforcement Management, who undertook a site visit to the property on 15 February 2025, has also confirmed that the engine room structure was demolished on 15 February 2025.

Conditions 3, 4, 6 and 12 of 20220915 were discharged on 31 January 2025 and related to the code of construction practice, details of construction compound, wheel washing and a phasing plan. These are clearly 'pre-commencement' conditions.

An application to vary conditions 5, 7, 8, 9, 10 and 11 was submitted under reference 20241124 and had an expiry date of 11 March 2025.

A non-material amendment application reference 20250112 was submitted on 10 February 2025 with an expiry date of 3 March 2025. These applications sought to delay trigger points to allow information to be submitted before ground works rather than 'prior to commencement'

It is noted that the applicant agreed to pre-commencement conditions imposed on the original planning application (conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12) on 1 September 2020 and therefore was aware of their requirements.

The demolition of the engine room was undertaken prior to discharging all the 'pre-commencement' conditions mentioned above. Therefore the demolition itself is in breach of the conditions and cannot be relied on as commencing works.

Statutory Declaration

This outlines the history of the site and the applicant's efforts to keep the application extant. An application was submitted to vary the permission to alter the trigger points for the submission and approval of details under conditions 5, 7, 8, 9, 10 and 11. The reference for this application is 20241124. As this was not determined prior to the expiry date of the original planning permission a decision was made to carry out works to implement the planning permission.

A contractor was instructed to demolish the building known as the 'Engine Room'. This was demolished on 15 February 2025 and undated photos have been provided to corroborate this claim. The applicant takes the view that these demolition works were comprised in the development authorised by the planning permission. This building was required to be demolished in order to build the new car park and the new building facing Clifton Road.

The applicant's view is that the demolition amounts to 'a material operation comprised in the development' approved by the planning permission and so should be regarded as works which lawfully implement that permission.

As stated earlier, the Council's Planning Enforcement Manager has confirmed that the engine room structure was demolished on 15 February 2025, therefore this point is not disputed.

Legal Opinion from the applicant

The legal opinion was prepared on behalf of the applicant to determine whether planning permission was lawfully implemented before its expiry. The legal opinion summarises that the demolition of the engine room is considered to be a material operation as it relates to Section 56(4) of the Town and Country Planning Act 1990. That the pre-commencement conditions are process conditions and that they do not go to the heart of the permission. It is also argued that when considering the enforcement test, in their view, it would be unreasonable and irrational to undertake any enforcement.

They have considered each condition in turn and state:

Condition no. 5 requires the submission of a contamination land assessment. This is a "process condition", relating to the procedures that should be adopted to ensure that the development can be carried out safely. It has no bearing on the final form of the development and therefore does not go to the heart of the permission.

Condition nos. 7 and 8 requires a surface water drainage scheme to be approved and submitted and then carried out in accordance with that approval. While these conditions do admittedly have a bearing on the final form of the completed development, it is just one aspect as opposed to being a core part of the final development. It therefore does not go to the heart of the permission and is therefore not a "true" condition precedent, the breach of which would render the Works (potentially) unlawful.

Condition no. 9 requires the submission of a strategy to deal with the potential risks of contamination. Again this is a process condition; it does not go to the heart of the permission.

Condition no. 10 requires the approval of details in respect of foul and surface water. Like condition nos. 7 and 8, dealing with surface water, it does have a bearing on the final form of the development, however it is a comparatively small detail which has little bearing on the overall impact of the development. So it too is not a true condition precedent because it does not go to the heart of the Planning Permission.

Condition no. 11 requires the submission of an archaeological field evaluation. This is also a process condition which does not go to the heart of the Planning Permission.

In summary, the applicant's legal opinion is that none of these conditions go to the heart of the permission. However, they state that, if it is considered that the *Hart* exception does not apply to any or even all six, the question that needs to be asked is whether a decision to initiate enforcement proceedings against the works would be judicially reviewable.

They summarise with:

In summary, applying the sequential test as recommended by the Planning Encyclopaedia, we conclude that while the Works amount to implementation there has been an ostensible breach of conditions to the carrying out of lawful development. However, in this case, the Works are not unlawful because it is considered that, as a matter of planning judgment, the conditions themselves do not go the heart of the permission. Even if that view is rejected, then we submit that it would not be lawful – because it would not be rational - to take enforcement action against the Works themselves. It follows that the Works amount to the lawful implementation of the Planning Permission. It also follows that it is open to the LPA to positively determine the s.73 Application should it deem that this application acceptable in all other respects.

Consideration of whether development has commenced in accordance with s.56 of the TC&PA

The Council accepts that demolition of the engine room structure took place on 15 February 2025; this is a fact that is not disputed. The next step is to consider whether the demolition of this structure is sufficient under s.56 of the TC&PA to commence the permitted development. The applicant contends that the demolition of the structure was required in order to provide the car parking for the permitted development, and therefore, comprised in the development. This point is not disputed either. Therefore, it is the Council's view that the development commenced on 15 February 2025, in advance of the deadline of 17 February 2025.

The next step is to consider whether the works undertaken above, breach conditions precedent and therefore do not lawfully amount to valid commencement

Consideration of conditions precedent and valid commencement

The outstanding 'pre-commencement' conditions, relate to:

5 – Contaminated land: *No development approved by this permission shall be commenced prior to a contaminated land assessment (in accordance with the CLEA guidelines and CLR 11 methodology) and if necessary an associated remedial strategy, together with a timetable of works, being submitted to the Local Planning Authority for approval....*

7 – Surface water drainage: *The development shall not commence in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to, and approved in writing, by the Local Planning Authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment prepared by Herrington Consultants, dated May 2019, and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.*

8 – Surface water drainage verification report: *The development shall not commence in any phases until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations*

of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

9 – Contamination: *The development shall not commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to, and approved in writing, by the Local Planning Authority. This strategy must include...*

10 – Foul and surface water sewerage disposal: *The development shall not commence until details of the proposed means of foul and surface disposal have been submitted to, and approved in writing, by the Local Planning Authority in consultation with Southern Water; the development shall be implemented in accordance with the approved details.*

11 – Heritage and archaeology: *The development shall not commence until the applicant, their agents of successors in title have secured the implementation of; (a) Archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and (b) Following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigations and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority.*

13 – Materials: *Details and samples of all materials including the façade wall and all surface materials to be used externally on any part or phase of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before that part of the development is commenced; the development shall be carried out in accordance with the approved details.*

14 – Details of railings, boundary and balcony treatments: *Details and samples of all railings, gates, boundary treatments and balcony treatments to be used in any part of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to any above ground works commencing; the development shall be carried out in accordance with the approved details.*

15 – Sustainability: *Prior to the commencement of any above ground works, an Energy Report including the carbon footprint and emissions of the site, along with full details of the sustainability measures to be incorporated into the development shall be submitted for approval to the Local Planning Authority; the development shall be carried out in accordance with the details before the first occupation of any part of the development. The sustainability measures should include the provision of solar photovoltaics (PV) and Electric Vehicle charging points.*

16 – Access: *The existing access should be configured as a dropped kerb with footway crossover as opposed the current bellmouth arrangement and details shall be submitted for approval to the Local Planning Authority before the commencement of any above ground works; the development shall be carried out in accordance with the approved details.*

Development which itself amounts to a breach of planning control cannot 'begin' a development. There are, however, some exceptions. This could be if an application is made to discharge a pre-commencement condition in time (before permission expires) and works commence (which could be demolition) and the condition is discharged later and after the deadline as in the case of F.G. Whitley & Sons in 1992. However, this is not the case here because the applicant has not sought to discharge the above pre-commencement conditions at any point.

A condition precedent describes an arrangement by which a specific event or situation must occur before a subsequent event can happen. As set out in the Whitley Principle, there is a distinction between pre-commencement conditions and a true condition precedent in terms of planning, this being:

- Pre-commencement condition: A condition which merely stipulates that something must be done before the time when the development commences; and
- Condition precedent: A condition which goes further and stipulates that the development cannot commence unless the condition is fulfilled.

Hart Aggregates Ltd v Hartlepool Borough Council [2005] EWHC 840 (Admin) is a landmark judgment in UK planning law that significantly softened the strict "Whitley principle," which previously held that any development commenced in breach of a condition precedent was unlawful and could result in the loss of planning permission. The judgment introduced a "common sense" approach to planning conditions, distinguishing between different types of conditions. The "True Condition Precedent" Test: Sullivan J established that for a breach of a condition to render the entire development unlawful (and thus invalidate commencement), the condition must meet two criteria:

- Express Prohibition: It must expressly prohibit any development from taking place until the condition is met.
- Go to the Heart of the Permission: It must be fundamental to the permission itself.

In a subsequent Court of Appeal decision (Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011] EWCA Civ 908) it was specifically endorsed that there should be a need for a condition to go to the 'heart of the matter' to be a true condition precedent. This was reconfirmed in Meisels and Anor v Secretary of State for Housing, Communities and Local Government [2019] EWHC 1987 (Admin), which also emphasises that whether a condition goes to the heart of a permission is a planning judgment for the decision-maker.

The issue of true condition precedent and that which goes to the heart of the planning permission are discussed in the following linked appeals APP/Y3940/X/19/3222425 (linked case, also referred to as Appeal A) and APP/Y3940/W/18/3210938 (lead case, also referred to as Appeal B) both of which were dismissed (appendix 2).

Appeal A was an appeal against non-determination of a lawful development certificate. This certificate sought confirmation that the installation of two manholes and a length of surface water drain and/or the demolition of a section of wall at the site access was a material operation. The inspector agreed that the demolition was a material operation as was the drainage work and both were undertaken before the expiration of the permission. However he went on to say that:

'having regard to F G Whitley & Sons Co. Ltd v Secretary of State for Wales & Clwyd CC [1992] WL 895744, in order to lawfully begin development in accordance with s56, any material operation relied on must not be in breach of a condition precedent (the Whitley principle)'

These works were carried out before a pre-commencement condition was discharged. If a true precedent condition is not discharged before the works on site commenced then the development has not been lawfully commenced.

Are any of the outstanding conditions a true condition precedent?

The answer to this question depends first, as a matter of interpretation, on whether the condition needs to be discharged prior to development beginning. If it does, the second test is whether, as a matter of planning judgment, the condition "goes to the heart of the planning permission", as expressed by Sullivan J in R (on the application of Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin).

In the above-mentioned appeals, the inspector reached a planning judgement that the pre-commencement conditions expressly prohibited development from taking place as worded until the requirements of the relevant condition were met. This, therefore, met the first limb of the Sullivan J test.

Whether a condition goes to the heart of the permission is a matter of planning judgment and involves an assessment of the significance of the condition. In the case of the above appeals, this relates to just one condition. In the case of this application for a lawful development certificate, there are 10 pre-commencement conditions outstanding. In the above appeals, the Planning Inspector held that the condition in question was both a true condition precedent and went to the heart of the permission.

In respect of the Sullivan J test, as part of the first consideration, conditions 13-16 (inclusive) are considered to be pre-commencement conditions, but not conditions precedent. However, it is considered that conditions 5, and 7 to 11 (inclusive) are conditions precedent, whereas the legal opinion of the applicant disagrees. The Council is of the opinion that at the very least conditions 5 & 9 (contamination) and 11 (Archaeology & Heritage) by their nature and wording are conditions precedent.

There can be no doubt that conditions 5 and 7 to 11 (inclusive) are expressly prohibitive of commencement of development prior to the details being agreed in writing by the Council, to the reasonable reader having regard to the natural and ordinary meaning of words. The question then is, would the approved details be of such fundamental importance to the scheme, so as to constitute a matter which goes to the heart of the permission?

In considering the second limb of Sullivan J's test, it is important to consider the reasoning and justification for imposing each condition. This information is set out in the Decision Notice for 20190504 and appended to this report at Appendix 3.

Condition 5 was imposed to protect future occupants and neighbouring properties from the impacts of contaminated land.

Condition 7 was imposed to ensure that the proposed development did not exacerbate the risk of on or off site flooding.

Condition 8 was imposed to protect future occupants, neighbouring properties, water systems and the local ecosystem from flood hazards

Condition 9 was imposed to protect the Principal Aquifer located directly beneath the development site

Condition 10 was imposed to safeguard groundwater located directly beneath and in the vicinity of the development site

Condition 11 was imposed to safeguard the historical significance of the development site.

Pre-commencement conditions go to the heart of a permission if the development is not acceptable without them. Protection against contamination and flood risk are both in the public interest, as is the protection of archaeological remains and therefore, on this basis, development would not be acceptable without these issues being mitigated against prior to works commencing.

Applying the principles set out in Whitley and Hart, these are interpreted as requiring compliance before any operations, including demolition. The conditions apply to "the development" holistically (s.56(1)(a)), including demolition as preparatory operations. With demolition having the potential to disturb contaminants or affect flood risk, drainage, and archaeology.

On the basis of the findings above it is the Council's opinion that at least conditions 5, 7-11 (inclusive) go to the heart of the permission and the development would not be acceptable without compliance with them. No attempt has been made to discharge these. Therefore the works to demolish part of the building are considered to be unlawful and the permission to which this LDC application relates, is concluded as having expired.

If the demolition of a building is being considered the commencement of development then the pre-commencement conditions above must have been discharged prior to this and they have not.

The applicant has made the point that Planning Practice Guidance advises against the use of pre-commencement conditions unless there is a clear justification. It is the Council's view that a clear justification has been given and also notes that the applicant agreed to these pre-commencement conditions being imposed.

The Council does not agree that the proposed timing of the conditions was not so fundamental to the development that it would otherwise be refused.

The Council does not agree that demolition works undertaken would not affect the requirements of these conditions as no below ground works were needed because they are worded to include all development, not just work below ground.

The Council does not agree that the conditions are 'process' conditions but do go to the heart of the permission.

Finally, the applicant goes on to contend that it would be irrational for the Council to utilise its planning enforcement powers, applying *Hammerton v London Underground Ltd* [2003] J.P.L. 984.

The case of *Hammerton v London Underground Ltd* [2003] J.P.L. 984 placed the exception to the Whitley rule on a broader basis. Ouseley J held: *"where it would be unlawful, in accordance with public law principles, notably irrationality or abuse of power, for a local planning authority to take enforcement action to prevent development proceeding, the development albeit in breach of planning control is nevertheless effective to commence development...Enforcement action may still be taken to remedy the breach by requiring compliance with the condition. But the development cannot be stopped from proceeding..."*.

The Court in *Hammerton* went on to hold that whether or not the operations had been effective to constitute the start of development depended on whether it would be rational for the LPA to take enforcement action to prevent the entire development from proceeding, not solely what had occurred to date i.e. the applicant demolishing the engine room structure. The question therefore became whether the breach of planning control can be enforced against. Where enforcement action is no longer possible the planning permission is to be viewed as having been lawfully implemented, despite the fact that the operations might have commenced in breach of a condition precedent.

It is the Council's view that stopping the entire development because of the missing details required under conditions 5,7-11 (inclusive) is entirely justifiable, that the breach is not trivial or technical in nature given the basis and reasoning for those conditions, and that the developer made no attempt to comply with these conditions. As such, it would be rational and expedient for the Council to utilise its enforcement powers in this context.

Conclusion

The evidence shows breaches of true conditions precedent which could lawfully be enforced against. It follows that the Works were unlawful and did not implement the Planning Permission.

The Council's proposed refusal of the Application is robust. The demolition breached true conditions precedent going to the heart of the permission, rendering it unlawful and the permission lapsed under s.56 and 91 TCPA 1990. This aligns with the principles set out in Whitley, Hart, Hammerton, and Meisels.

Summary

In summary, the applicant has applied for a lawful development certificate for the following:


a) Material operations were undertaken on site prior to the expiry of permission 20220915 (before 17th February 2025). *This is not disputed but, alone, this does not constitute legally commencing development.*

b) It seeks confirmation that, as identified in the submitted Legal Opinion, pre-commencement conditions 5, 7, 8, 9, 10 and 11 are process conditions and do not go to the heart of the permission. In addition, these conditions are proposed to be varied through minor amendments to the wording within two live applications – a S.73 application (20241124) and a non-material amendment application (20250112). Both applications were submitted prior to the expiry of Permission 20220915. Both applications remain pending determination. *This is disputed. The conditions are considered to go to the heart of the permission and therefore these conditions must be discharged before the commencement of works.*

c) With the above points considered, it seeks confirmation that planning permission 20220915 has been lawfully implemented. This status will allow the conditions associated with the permission to be amended and a decision to be issued on both live applications (20241124 and 20250112). *Planning application 20220915 has not been lawfully implemented and therefore 20241124 and 20250112 cannot be approved.*

The 20220915 permission has not been lawfully implemented within the three year statutory period and therefore is no longer extant. The works undertaken are not lawful and a certificate cannot be granted.

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

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	11 November 2025	Dated:	26 th November 2025

Appendix 1

Kent Police Designing Out Crime Officer Response

We have reviewed this application in regard to Crime Prevention Through Environmental Design (CPTED) and in accordance with the National Planning Policy Framework (NPPF).

Applicants/agents should consult us as Designing out Crime Officers (DOCO's) to address CPTED and incorporate Secured By Design (SBD) as appropriate. We use details of the site, relevant crime levels/type and intelligence information to help design out the opportunity for Crime, Fear of Crime, Anti-Social Behaviour (ASB), Nuisance and Conflict.

There is a carbon cost for crime and new developments give an opportunity to address it. Using CPTED along with attaining an SBD award using SBD guidance, policies and academic research would be evidence of the applicants' efforts to design out the opportunity for crime.

We recommend SBD guidance is utilised to address designing out crime to show a clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to meet our Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998. The points below identify my recommendations for the layout and design of this scheme.

1. Perimeter, boundary and divisional treatments must be 1.8m high. Any alleyways must have secure side gates, which are lockable from both sides, located flush to the front building line.
2. Parking - To help address vehicle crime, security should be provided for Motorbikes, Mopeds, Electric bikes and similar. SBD or solid secure ground or wall anchors can help provide this. Where unavoidable, the car parking area must be covered by natural surveillance from an "active" window e.g. lounge or kitchen and sufficient lighting. In addition, we request appropriate signage for visitor bays to avoid conflict and misuse.
3. Any current or new trees should help protect and enhance security without reducing the opportunity for surveillance or the effectiveness of lighting. Tall slender trees with a crown of above 2m rather than low crowned species are more suitable than "round shaped" trees with a low crown. New trees should not be planted within parking areas or too close to street lighting. Any hedges should be no higher than 1m, so that they do not obscure vulnerable areas.
4. Lighting. Please note, whilst we are not qualified lighting engineers, any lighting plan should be approved by a professional lighting engineer (e.g. a Member of the ILP), particularly where a lighting condition is imposed, to help avoid conflict and light pollution. Bollard lighting should be avoided, SBD Residential (Homes) Guide 2025 states:
 "19.3 SBD does not advocate the use of bollard lighting to achieve lighting uniformity. Bollard lighting is purely for wayfinding and can be easily obscured or damaged. It should be avoided, as it can increase the fear of crime, because it does not project sufficient light at the right height to recognise facial features." Lighting of all roads including main, side roads, cul de sacs and car parking areas should be to BS5489-1:2020 in accordance with SBD and the British Parking Association (BPA) Park Mark Safer Parking Scheme specifications and standards.
5. All external doorsets (a doorset is the door, fabrication, hinges, frame, installation and locks) including folding, sliding or patio doors and individual flat entrance doors to meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+. Please note PAS 24 is a minimum-security standard, and communal doors may require a higher standard, such as STS or LPS.
6. Windows on the ground floor or potentially vulnerable e.g. from flat roofs or balconies to meet PAS 24: 2022 UKAS certified standard, STS 204 Issue 6:2016, LPS 1175 Issue 8:2018 Security Rating 1/A1, STS 202 Issue 7:2016 Burglary Rating 1 or LPS 2081 Issue 1.1:2016 Security Rating A. Glazing to be laminated. Toughened glass alone is not suitable for security purposes.
7. Bedroom windows on the ground floor require a defensive treatment to deflect loitering, especially second bedrooms often used by children.

8. Blank Walls. It is important to avoid the creation of windowless elevations and blank walls immediately adjacent to public spaces. This type of elevation tends to attract graffiti, inappropriate loitering, and ball games. The provision of a 1m buffer zone using either a 1.2 – 1.4m railing or a 1m mature height hedge with high thorn content should address those issues.
9. We recommend “A GUIDE FOR SELECTING FLAT ENTRANCE DOORSETS 2019” for buildings featuring multiple units, any covered access must deflect loitering that can stop residents and their visitors from using it without fearing crime. Entrance doors must be lit and designed to provide no hiding place.
10. For the main communal doors audio/visual door entry systems are required. We strongly advise against trade buttons and timed-release mechanisms, as they permit unlawful access and have previously resulted in issues with Crime and ASB.
11. Security Compartmentation is required in larger apartment blocks (over 25 units) or fewer in densely populated buildings or areas of higher crime. It helps reduce the opportunity for crime, the taking over the home of a vulnerable person in order to create a base for criminality and unauthorised free access throughout the building. It can be achieved with formal access control on lifts, staircases and lobby doorsets on all floors.
12. Cycle and Bin Stores must be well lit and lockable, with controlled access for the residents within the flats.
13. Mail delivery to meet SBD TS009 are strongly recommended for buildings with multiple occupants along with a freestanding post box of SBD/Sold Secure approved Gold standard. If mail is to be delivered within the lobby, there must be an access controlled door leading from the lobby to the apartments/ stairs on the ground floor to prevent access to all areas.
14. CCTV is advised for all communal entry points and to cover the mail delivery area.
15. Open space. Open space areas must be well lit and boundaries must be clearly defined to avoid conflict.
16. Community areas/ gardens will also require more natural surveillance, appropriate boundary treatments and access control as they generally attract Crime, ASB and nuisance. It is also advised that tools and equipment that are either of high value, or can be used to commit an offence are either not left overnight or secured in lockable storage areas.
17. Public Footpaths should be at least 3 metres wide to allow people to pass without infringing personal space and to accommodate passing wheelchairs, cycles and mobility vehicles. Consideration should be given to the provision of informal association spaces for members of the community, particularly young people.
18. Planting. We would recommend dense / prickly planting to ensure individuals stay on pedestrian routes, and do not create desire lines. or spaces where potential offenders can hide from view.

Private Gymnasium / B1, D1 and D2 flexi use space

19. CCTV is advised especially at entry points, reception/waiting areas, any till areas or anywhere cash handling might take place and other areas with limited natural surveillance or storage areas containing high-value equipment. Please ensure the CCTV supports the lighting plan.
20. We strongly recommend external doors and windows meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+.
21. We strongly recommend alarms, with an auto-dial function, be installed on all external doors, including emergency exits.
22. Access control. Adequate access control is required for entrances used by staff only such as storage rooms and other restricted areas.

If approved, site security is required for the construction phase. There is a duty for the principle contractor “to take reasonable steps to prevent access by unauthorised persons to the construction site” under the Construction (Design and Management) Regulations 2007. The site security should incorporate plant, machinery, supplies, tools and other vehicles and be site specific to geography and site requirements.

We welcome a discussion with the applicant/agent about site specific designing out crime. If the points above are not addressed, they can affect the development and local policing.

This information is provided by Kent Police DOCO's and refers to situational crime prevention. This advice focuses on CPTED and Community Safety with regard to this specific planning application.