



Delegated Report

Prior Approval

Planning Application No: 20240999

Location: F S Steakhouse Ltd, 25 - 26 Milton Road, Gravesend, Kent DA12 2RF

Description: Application to determine if prior approval is required for a proposed; Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA.

Applicant: Mr Kalvinder Sandher

Submitted Documents/Plans

Application form
Drawing no. 103 (site location plan)
Drawing no. 101 (existing first floor plan)
Drawing no. 104 (existing and proposed block plan)
Drawing no. 104 (proposed first floor plan)
Noise Impact Assessment by MRL Acoustics

Relevant Planning History

20200702	_REVISED PLAN_ Conversion and change of use of first floor from A3 (restaurant) to C3 use (dwelling houses) to provide 2 residential units comprising one 1 bedroom flat and one 2 bedroom flat.	Permitted	08.01.2021
20120959	Installation of three roof lights in front roof slope.	Permitted	07.08.2013
20120569	Application for variation of condition 4 attached to planning permission reference number 19980017 to allow the restaurant to extend it's hours of opening, to operate between 07.00 hours until 02.00 hours the following morning, every day including Sundays and Bank Holidays.	Permitted	18.09.2012
20100159	Application for variation of condition 4 of planning permission reference number 19980017 for erection of a three storey building	Temporary consent	01.06.2010

to form restaurant; to allow the restaurant to extend its opening hours from 07.00 am until 02.00am every day of the week including Sundays and Bank Holidays.

20070962	Application for variation of condition 4 of planning permission reference number GR/1998/17 to allow the restaurant to open at 6.30am.	Refused	20.12.2007
20070261	Application for variation of condition 4 of planning application reference number GR/1998/17 to allow the restaurant to extend its hours of opening.	Refused	26.07.2007
20060398	Erection of first floor rear extension to provide wc accommodation for restaurant.	Permitted	10.07.2006
20050974	Application for variation of condition 4 of planning permission reference number GR/1998/17 to allow the restaurant to extend it's hours of opening, to operate between 07.00 hours until 02.00 hours the following morning, every day including Sundays and Bank Holidays.	Permitted	28.12.2005
20040282	Erection of a conservatory at first floor level at the rear.	Permitted	17.05.2004
20021018	Erection of a conservatory at first floor level at the rear.	Refused	31.03.2003
20031092	Display of two internally illuminated double sided projecting signs at first floor level.	Refused	11.02.2004
20000513	Use of the first floor as seating area ancillary to the ground floor restaurant; retention of the 3 no. dormer windows in the rear roof slope; conversion of the roof space into a store; erection of an external fire escape staircase at the rear from first floor level and installation of new shopfront to the partially constructed building previously permitted under planning permission ref. no. GR/98/17.	Permitted	27.10.2000

19980017	Erection of a three storey building to form restaurant at ground floor level with cooking and preparation area in the basement, offices and staffroom at first floor level and a self-contained flat at second floor level.	Permitted	24.06.1998
19930709	Erection of three storey building to form a restaurant with ancillary takeaway facilities at ground floor with two one bedroomed self-contained flats at first and second floor levels.	Permitted	09.02.1995
19891004	Erection of first and second floor levels to form offices and use of part of the ground floor at the side as additional take-away facilities.	Permitted	08.04.1993

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS05 – Gravesend Town Centre Opportunity Area
- CS11 - Transport
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards
- T1 – Impact of Development on the Highway Network

Paragraph 34 of the NPPF (2024) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2024), the Council will also seek to replace these.

National Planning Policy Framework (2024)

- Section 2 – Achieving sustainable development
- Section 4 – Decision-making
- Section 5 – Delivering a sufficient supply of homes
- Section 8 – Promoting healthy and safe communities
- Section 11 – Making effective use of land
- Section 12 – Achieving well-designed places

- Section 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- SPG 2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020;
- Technical Housing Standards – nationally described space standard (2015);
- Design for Gravesham: Design Code (2024);
- SPG 4 - KCC Parking Standards (2006);
- Householder Extensions/Alterations Design Guide (2021)

Consultations, Publicity and Representations

Consultees

Environment Agency

No comments to make.

Kent Fire and Rescue

Upon reviewing Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 in relation to converting from use Class E to use Class C3, I note conditions MA.3 where it does not meet the fire risk conditions of a) and b). Therefore, it would appear the Fire Service do not require a notification at this stage. Please refer to condition MA.2. to determine the suitability of this application.

I would like to note, however, that the access road leading to the proposed dwelling appears to be unaffected. Therefore, it is in my opinion, that the emergency access requirements under the above act appears to have been met.

Please be aware that should this proposal be successful it would then be subject to a Building Regulations consultation where the access arrangements would again be examined under section B5.

Fire Service access and facility provisions are a requirement under B5 of the Building Regulations 2010 and must be complied with to the satisfaction of the Building Control Authority. A full plans submission should be made to the relevant building control body who have a statutory obligation to consult with the Fire and Rescue Service.

If you require any further advice, please contact this office using the details above. Please be aware that the Building Safety office hours are 09:00-17:00 Monday to Friday.

KCC Highways

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.

KCC Flood and Water Management

As Lead Local Flood Authority, Kent County Council are required to provide technical advice and guidance on the surface water drainage strategies, designs and maintenance arrangement put forward by developers to any new major development.

According to the Town and Country Planning (Development Management Procedure) (England) Order 2010, major development is defined in planning as any development involving any one or more of the following:

- a) The winning and working of minerals or the use of land for mineral-working deposits;
- b) Waste development;

- c) The provision of dwelling houses where:
- i. The number of dwelling houses to be provided is ten or more; or
 - ii. The development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c) (i);
- d) The provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- e) Development carried out on a site having an area of one hectare or more.

The application under the above reference number therefore falls outside the definition of major development and also falls outside of KCC's remit as statutory consultee. Notwithstanding the above, please feel free to contact us again if you consider there to be local flood risk issues on this site that may require further consideration.

GBC Environmental Protection

The commercial premises on the ground floor is a bar with a 2am Premises License and is also known to have live/amplified music events. In addition, the basement of the building is also used as part of the bar/entertainment area. The rear yard is potentially used as a smoking area and also acts as the fire exit for both basement and ground floor. It's noted that the existing emergency exit for the 1st floor at the rear will be blocked up.

The Private Housing Team need to be consulted, particularly about fire safety.

The Noise Impact Assessment by MRL is dated December 2018. This is now considered to be out of date bearing in mind that this was 6 years ago. The noise climate in the area is likely to have changed since then – there could be other/new commercial sources in the vicinity, new/replacement plant and equipment associated with these uses and the premises itself may have altered in its use.

Looking at the report, it mainly considers traffic noise. Other commercial premises/sources in the area do not appear to have been given much consideration. There are various food/retail premises nearby which may have external plant/equipment and in addition there is a large petrol filling station opposite. No consideration of internal noise transmission through the ceiling floor partition has been made.

Based on the above, insufficient consideration of the impact of noise from commercial sources has been made. It is recommended that the application is refused unless the applicant is able to have the NIA updated/revised and re-submitted for consideration.

The NIA should ensure noise from all commercial sources are fully considered (including the use of the ground/basement floors of 25-26), should include a sound insulation test of the ground/1st floor partition and also detail any noise mitigation required.

It should also be noted that the premises falls within an Air Quality Management Area so ideally mechanical ventilation should be installed to ensure that the future occupants have an alternative means of ventilation to opening windows and allowing polluted air in.

Neighbouring properties

The application has been advertised by site notice. No letters of representation have been received. The consultation period expired on 25 November 2024.

Officer's Analysis

Proposal

This application seeks to determine if prior approval is required for a proposed; Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 3, Class MA.

The application site is a three storey terrace property with a restaurant at ground and first floor.

The proposal shows two flats proposed at the first floor. The front flat will be one bedroom with a lounge/kitchen/diner, a store and a bathroom. The rear flat will have two bedrooms, a lounge/kitchen/diner, store and a bathroom.

There will be no external changes and there is no existing or proposed parking.

The site is location within the Milton Place Conservation Area.

Assessment

Class MA of Part 3 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order. Class MA was inserted by SI 2021 No. 428, and recently amended by SI 2024 No. 141.

Paragraph MA.1. states that development is not permitted by Class MA:

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

(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.

The following points assess the submitted application against the above criteria:

(b) Google Maps Street Views show the property as being occupied by a restaurant as far back as 2008 and continuously so in 2009, 2012, 2014, 2016, 2017, 2018 (when the restaurant changed from curry house to steakhouse), 2019, 2020 and 2022. It is not clear from these images what the use above the first floor has been but this is not relevant to part (b) as it refers only to the whole building. This use therefore falls within one of the classes in sub-paragraph 2 (Class A3)

(d) The site is not part of a site of special scientific interest; a listed building; a scheduled monument; a safety hazard area; or a military explosives area.

(e) The building is not within: an area of outstanding natural beauty; an area specified for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; the Broads; a National Park; or a World Heritage Site.

(f) The site is not occupied under an agricultural tenancy.

(g) The proposal does not fall within Class O (offices to dwellinghouses).

Development under Class MA is permitted subject to the following conditions set out in paragraph MA.2:

(2) Before beginning development under Class MA, 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—

(a) transport impacts of the development, particularly to ensure safe site access;

(b) contamination risks in relation to the building;

(c) flooding risks in relation to the building;

(d) impacts of noise from commercial premises on the intended occupiers of the development;

(e) where—

(i) the building is located in a conservation area, and

(ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;

(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;

(g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;

(h) where the development involves the loss of services provided by—

(i) a registered nursery, or

(ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost.

(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building.

The following points assess the submitted application against the above criteria:

(a) Transport impacts of the development

The site lies in the Town Centre within the urban area of Gravesend. It is in a sustainable location with good access to public transport links and public car parking. There is no parking provision for the property. The parking and access requirements for a two storey restaurant, and a ground floor restaurant with two

flats above are comparable, particularly in such a sustainable location and where there are similar provisions and requirements at neighbouring premises, and there is therefore no reason to raise an objection on this basis.

Prior approval would not therefore be required in terms of the transport and access aspects of the proposed development under paragraph 116 of the NPPF 2024, Policy CS11 of the Core Strategy 2014 and Policies T1 and P3 of the Local Plan 1994.

(b) Contamination

The application involves the conversion of an existing building involving internal alterations only. There would be a low environmental risk from such a proposal. Therefore, no contamination issues should arise as a result of the development and prior approval would not be required in terms of the contamination risks in relation to the building under Policy CS19 of the Core Strategy 2014 and paragraph 196 of the NPPF 2024.

(c) Flooding

The development is in flood zone 1. This means it has a low probability of flooding from rivers and the sea. Therefore, no flood issues should arise as a result of the development and prior approval would not be required in terms of the flood risks in relation to the building under Policy CS18 of the Core Strategy 2014 and paragraph 181 of the NPPF 2024.

(d) Noise

The application site is within a busy town centre location with a late-night economy and early morning/out of hours activities (deliveries etc). The properties either side of the application site are a grocery shop and law firm and further away are a pizza takeaway and grocery which may contain kitchen extract systems and refrigerators. The site is also adjacent to the A226 one-way system, which is heavily trafficked. All of these surrounding uses, plus the remaining restaurant use on the ground floor, are likely to give rise to noise issues, and the sound insulation quality may not be sufficiently robust to protect against any noise incursions.

The commercial premises on the ground floor is a bar with a 2am Premises License and is also known to have live/amplified music events. In addition, the basement of the building is also used as part of the bar/entertainment area. The rear yard is potentially used as a smoking area and also acts as the fire exit for both basement and ground floor. It's noted that the existing emergency exit for the 1st floor at the rear will be blocked up.

The Noise Impact Assessment by MRL is dated December 2018. This is now considered to be out of date bearing in mind that this was 6 years ago. The noise climate in the area is likely to have changed since then – there could be other/new commercial sources in the vicinity, new/replacement plant and equipment associated with these uses and the premises itself may have altered in its use.

Looking at the report, it mainly considers traffic noise. Other commercial premises/sources in the area do not appear to have been given much consideration. There are various food/retail premises nearby which may have external plant/equipment and in addition there is a large petrol filling station opposite. No consideration of internal noise transmission through the ceiling floor partition has been made.

Based on the above, insufficient consideration of the impact of noise from commercial sources has been made. The NIA should be updated/revised and should ensure noise from all commercial sources are fully considered (including the use of the ground/basement floors of 25-26), should include a sound insulation test of the ground/1st floor partition and also detail any noise mitigation required.

The impacts of noise on the intended occupiers of the development has not been sufficiently addressed therefore the proposal conflicts with the objectives of Policy CS19 of the Gravesham Core Strategy 2014 and paragraph 187 of the National Planning Policy Framework 2024 and prior approval is refused.

(e) Conservation

The building is in the Milton Road Conservation Area but does not involve any development on the ground floor. Prior approval would not be required in this regard.

(f) Natural light

As can be seen on the accompanying floorplans, the proposed flats will benefit from windows that will serve all habitable rooms and mean that future occupiers will receive a good provision of natural light. Prior approval is therefore granted in terms of the provision of adequate light for the development under paragraph 135 of the NPPF 2024 and Policy CS19 of the Core Strategy 2014.

(g) Industrial area

The site is not in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses, and therefore there would be no adverse impact on the intended occupiers of the development with the introduction of a residential use. Prior approval would not be required in this regard.

(h) Loss of services

As the premises comprises restaurant space, the development does not involve the loss of services provided by a registered nursery or a health centre, and therefore there would be no impact or loss on the local provision of such services. Prior approval would not be required in this regard.

(i) Fire safety

In relation to the interpretation under MA.3., the development does relate to a building that contains two or more dwellinghouses however it is not over 18m in height or more than 7 storeys high and therefore does not satisfy part (b) of MA.3. Prior approval would not be required in this regard.

Other Matters

Thames Estuary and Marshes Ramsar / Special Protection Area (SPA) – SAMMS Tariff:

As the application site is within 6km of the Thames Estuary and Marshes SPA/Ramsar Sites and would provide additional residential accommodation, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.

In addition to the criteria of Class MA, the proposed development is subject to Regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010 (as amended), which require the Local Planning Authority to take into account whether the proposal would, either alone or in combination, have likely significant effects on a European Site (SPA/SAC/Ramsar site). Regulation 73 (1) of the Habitat Regulations states: "It is a condition of any planning permission granted by a general development order... that development which is likely to have a significant effect on a European site... (either alone or in combination with other plans or projects)... must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 75."

The proposed development is considered to have likely in-combination effects due to its recreational

impacts. Thus, any successful application would need to satisfy the requirements of the Habitat Regulations and would require a financial contribution of £328.27 per residential unit to mitigate the adverse impacts.

An informative to this effect would be added to any approval.

Conclusion and Recommendation

The application fails to meet the conditions set out in Class MA.2 (2) (d) of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), particularly with regards to the impact of noise from commercial premises on the intended occupiers of the development. The impacts of noise on the intended occupiers of the development has not been sufficiently addressed therefore the proposal conflicts with the objectives of Policy CS19 of the Gravesham Core Strategy 2014 and paragraph 187 of the National Planning Policy Framework 2024. Prior approval is therefore required and is refused.

Recommendation:

Prior approval is refused.

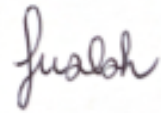
INFORMATIVE

In the case of an approval the following informative would be applicable:

Air Quality

This area is within the A226 One Way System Air Quality Management Area (AQMA) declared for exceedances of the annual Air Quality Objective (AQO) for nitrogen dioxide (from traffic). As such, new sensitive receptors will be introduced into an area recognised as having poor air quality. Whilst this is not a matter directly applicable for consideration under this type of application, it is advised that an informative be included recommending that as habitable rooms front the A226, an appropriate scheme should include the requirement for rooms with windows facing the roadside to be upgraded and sealed so as to prevent pollution from entering the residential unit and a MVHR system be installed as a means of alternative ventilation and cooling. This will also provide the occupants with choice i.e. to close windows to shut out noise from traffic or people making use of the night-time economy.

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

Case Officer:	Mrs Alison Webster	Team Leader:	Mrs Faye Walsh
Signed:		Signed:	
Dated:	18 December 2024	Dated:	24 December 2024