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# Appeal Decision

Site visit made on 15 November 2022

**by E Grierson BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 December 2022**

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**Appeal Ref: APP/K2230/W/22/3297812**

**12-14 High Street, Gravesend DA11 0BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Ms Julia Santomauro (Chiarli Ltd) against the decision of Gravesend Borough Council.
  - The application Ref 20190250, dated 8 March 2019, was refused by notice dated 26 November 2021.
  - The development is described as the change of use of 12-14 High Street from A1 (retail) to A3 (restaurant) including the installation of a new shopfront and external advertisements.
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## Decision

1. The appeal is allowed and planning permission is granted for the change of use of 12-14 High Street from retail to restaurant including the installation of a new shopfront at 12-14 High Street, Gravesend DA11 0BQ in accordance with the terms of the application, Ref 20190250, dated 8 March 2019 and the plans submitted with it, subject to the following conditions:
  - 1) The development hereby permitted shall be completed in accordance with the following approved plans: 3358:01 Rev D, 3358:04, 3358:010, 3358:007, 3358-008 Rev C and 3358:009 rev A.
  - 2) Unless within three months of the date of this decision a scheme for the refuse storage and collection arrangements ensuring adequate provision for non-recyclable waste, food waste and recyclable waste, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limited specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Unless within three months of the date of this decision a scheme for a extract ventilation system and odour control equipment particularly regarding odour elimination abilities and likely noise emissions, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials bought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material bought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in use and maintained in accordance with the manufacturer's instructions.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limited specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within three months of the date of this decision a sound insulation assessment demonstrating the construction that separates the residential and commercial unit resists the transmission of airborne sound, is submitted in writing to the local planning authority for approval, the use of the site shall cease and all equipment and materials bought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

In the event that it does not resist the transmission of airborne sound then the report shall provide suitable details of the substantially enhanced sound insulation performance of/sound reduction achieved by relevant floors/ceilings. If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease and all equipment and material bought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limited specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The use hereby permitted shall only take place between 11:00 – 23:00 Mondays – Sundays.

### **Preliminary Matters**

2. The application was submitted retrospectively, and I saw at my site visit that the change of use had already commenced, with the application form stating that this was completed on 22 September 2018. However, changes to the

shopfront have been proposed as part of the application. I have therefore considered the appeal on a part retrospective basis.

3. In their report the Council have raised discrepancies with regard to the red line boundary on the site location plan (drawing no. 3358.01 Rev D), in relation to the ownership of the amenity area to the rear. However, this area does not form part of the development and the matter of land ownership does not affect my consideration of the appeal.
4. The description of the development on the application form includes the external advertisements and the original application form submitted relates to planning permission and consent to display advertisements under the Town and Country Planning (Control of Advertisements) Regulation 2007. However, it is noted that these were granted retrospective planning permission under the application ref GR/20190251. Nevertheless, the Council have raised no objection with regard to this part of the proposal and I find no reason to disagree with this. Therefore, as advertisements are subject to a separate consent regime and have already been granted planning permission I have excluded them from the description of the development in the decision paragraph above.
5. The use classes detailed on the application form, A1 and A3, now fall under use class E of the Town and Country Planning (Use Classes) Order 1987 (as amended<sup>1</sup>) and I have taken account of this in my consideration of the appeal. However, I note from the evidence before me and from my observations on my site visit that the appeal properties appear to be in mixed use with residential use on the upper floors of the building. On the basis of this evidence, the appeal property would not fall within a particular use class and would in fact be 'sui-generis'. Furthermore, there are proposed alterations to the shop front which require planning permission in any event.

## **Main Issues**

6. The main issues are:
  - whether the development would preserve or enhance the character or appearance of the High Street Conservation Area, and
  - the impact of the development on the living conditions of the occupiers of neighbouring dwellings with regard to noise and disturbance from the ventilation system.

## **Reasons**

### *Conservation Area*

7. The appeal site is occupied by three retail units which have been converted into a single restaurant. It is located on a corner plot between High Street and Horn Yard and is within the High Street Conservation Area, a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

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<sup>1</sup> The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

8. The Conservation Area is the historic centre of the town of Gravesend with the principle features of the High Street area being its commercial uses and densely urban character. The overall character is historic, complemented by the use of traditional materials with continuous rows of tall buildings divided by narrow alleys and lanes. This is the basis for its significance. The appeal property forms part of a tall terrace building facing High Street with commercial units on the ground floor. I consider its original appearance, with three commercial units of a traditionally small scale, would have made a positive contribution to the significance of the Conservation Area.
9. Whilst the change of use and development of the shopfront has taken place, as part of the application, amendments to the shopfront are proposed. The appellant has indicated that this includes new timber corbels and bolection moulding to the front elevation to create more traditionally designed double pilaster effect. The proposed changes to the shopfront would add more historic detailing to the front elevation of this commercial unit and would reflect other traditional shopfronts within this Conservation Area. Furthermore, the proposed changes to the pilasters help to reinstate the original appearance of three separate shopfronts, which would be in keeping with this section of the Conservation Area where smaller units are more prevalent.
10. It is also noted that some of the surrounding shopfronts on High Street are more modern in design than the appeal site, with limited detailing and use of modern materials. Therefore, whilst the proposed shopfront may not be an exact replica of the original historic shopfronts which were previously in this location, the proposed shopfront would appear more in accordance with the historic nature of this Conservation Area than many of the surrounding units. Therefore, it would not detract from its overall character or appearance.
11. The alterations suggested by the Councils' Conservation Architect, may result in an improved shopfront which would enhance the appeal property's contribution to the Conservation Area. However, the shopfront proposed would sufficiently reflect the historic character of the appeal building and would not harm the character or appearance of the Conservation Area in which it is located. The proposed development would therefore preserve the character and appearance of the Conservation Area.
12. For the reasons above, I conclude that the proposed shopfront preserves the character and appearance of the High Street Conservation Area. Therefore, the development does not conflict with Policies CS19 and CS20 of the Gravesham Local Plan Core Strategy 2014. These policies seek to ensure that development conserves the character of the local historic environment, supporting proposals which preserve the significance of the Borough's heritage assets, including Conservation Areas.
13. Policy TC3 of the Gravesham Local Plan 1994 states that development will be expected to make a positive contribution to the Conservation Area. As the development makes only a neutral contribution to the Conservation Area, it does not accord with this policy. Nevertheless, the development does not harm the significance of the heritage asset and therefore would be considered acceptable in accordance with the historic objectives of the National Planning Policy Framework in Section 16.

### *Living Conditions*

14. From the submitted plans it is noted that there are residential units on the ground floor in close proximity to the appeal site. It also appears there are further residential units within the storeys above. The use itself would be likely to create more noise and disturbance to the occupiers of nearby residential units than a retail unit, which is generally only open during the day, from the comings and goings of customers, people talking and the potential for background music in the evening.
15. Whilst the change of use to a restaurant would likely introduce additional noise at a later time than a retail unit, it is noted that the surrounding area has a number of late night uses, such as restaurants and drinking establishments, and therefore there is already an established level of noise within the area. Furthermore, the entrance for the restaurant on High Street is sufficiently separated from the ground floor residential units to the rear of the site, thereby reducing the possible disturbance to the residential units from customers entering and exiting the restaurant. There could also be noise arising from within the restaurant which could transfer to adjoining neighbouring properties. However, a condition requiring the submission of a sound insulation assessment could be included to ensure that any necessary sound insulation measures between the restaurant and any adjacent residential units are secured. Therefore, the additional noise and disturbance from proposed change of use itself would not have a significant impact on the living conditions of the occupiers of the neighbouring dwellings.
16. The change of use from a retail unit to a restaurant would likely require kitchen ventilation equipment, that would generate some level of noise and disturbance for the occupiers of the surrounding residential properties. As such, the Council have contested that the submission of details regarding the ventilation/extraction equipment and noise attenuation should be submitted as part of the application.
17. The appellant considers that the change of use was granted under a prior approval application<sup>2</sup> which was refused by the Council but for which the decision fell outside of the statutory 56 days given to the Council to consider such applications. Therefore, they did not submit the details requested by the Council with this application. However, it is noted that this prior approval application was submitted after the change of use had taken place and therefore could not be considered under this type of application.
18. Whilst the location of the kitchen extract duct is shown on the submitted plans, no details have been provided indicating its odour eliminating ability and noise emissions. Nevertheless, the plans do show that the positioning of the extraction equipment would be well separated from the closest ground floor residential unit by an accessway, with the flue outlet located above the eaves level of the roof and positioned away from any windows on the building. Consequently, along with the details already provided, I am satisfied that details relating to the odour eliminating ability and noise emissions of the ventilation equipment could be secured by condition and that parties could agree upon measures to ensure that the ventilation equipment would not have a detrimental impact on the living conditions of the occupiers of neighbouring properties.

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<sup>2</sup> Ref 20180961 (prior approval application)

19. Therefore, the suggested conditions in relation to ventilation systems and noise attenuation would ensure that the change of use does not impact the living conditions of the occupiers of neighbouring dwellings with regard to noise and disturbance. It would therefore accord with Policy CS19 of the Gravesham Local Plan Core Strategy 2014 which seeks to ensure new development is designed to safeguard the amenity of occupants of neighbouring properties. It would also accord with paragraph 130 of the National Planning Policy Framework which states that decisions should ensure that developments create places that have a high standard of amenity for existing users.

### **Conditions**

20. I have attached a condition requiring the development to accord with the approved plans, as this provides certainty and precision. Although the application is partly retrospective in nature, as there are parts of the proposal which have not yet been implemented, this condition requires the development to be completed in accordance with the approved plans. A condition relating to the hours of operation for the proposed use has also been included to protect the living conditions of the occupiers of neighbouring residential units from use of the appeal site at night when noise could be more perceptible and disturbing.
21. Conditions 2, 3 and 4 are imposed to ensure that details relating to refuse storage and collection, the extract ventilation system and odour control equipment and sound insulation, are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the necessary details before the development takes place. These conditions will ensure that the development can be enforced against if these requirements are not met. The wording in relation to the technical details required to be submitted for these three conditions, requested by the Council, has largely been removed as these can be agreed between the parties at part of the discharge of conditions application process.
22. A condition suggested by the Council to restrict the use of the building to those falling within Class E (b) of the Town and Country Planning (Use Classes) Order 1987 (as amended), has not been included. This is because withdrawal of permitted development rights should only be done in exceptional circumstances and these have not been demonstrated.

### **Conclusion**

23. For the reasons set out above, the appeal is allowed.

*E Grierson*

INSPECTOR