

Tonbridge
Judd

TM/24/01199/PA

Location: 100 HIGH STREET TONBRIDGE TN9 1AN

Proposal: Prior Notification under Schedule 2, Part 3, Class MA: Change of use from Commercial, Business and Service (Use Class E) to Dwellinghouses (Use Class C3) to form 4x 1 bedroom flats

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1. Description of Proposal:

- 1.1 Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) permits the 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 of the Use Classes Order to a use falling within Class C3 (dwellinghouses).
- 1.2 The change of use is permitted providing the proposal meets the criteria set out in Class MA.1. In addition, the change of use is permitted providing an application for prior approval is made in accordance with the provisions of paragraph W, and the application is determined with regard to Class MA.2.
- 1.3 Class MA does not allow for any external alterations. Although the application form states that no change to the existing fenestration and elevations is proposed, the drawings show a new doorway to the north elevation. For clarify, any external alterations would require the submission of an application for planning permission.

2. Reason for reporting to Committee:

- 2.1 Councillor Hood requests the application be heard at Planning Committee as the proposal seems to be in conflict with the Tonbridge Town Centre Area Action Plan which requires development to provide an active frontage in this central retail area.

3. The Site:

- 3.1 The site lies in the confines of the town centre, within a Conservation Area, flood zones 2 and 3, and within a Primary Shopping Area as defined under policy TCA3 of the TCAAP.
- 3.2 The site lies on the corner of the High Street and River Walk (PROW MU30) with the River Medway beyond. The building is not listed but is an attractive addition to the street scene, in brick with Georgian style proportioned windows.

4. Planning History (most recent):

23/01951/FL

Approved - 08 January 2024

New Fire Exit door to rear elevation

23/01638/FL

Approved - 20 September 2023

Reinstate window to original height following ATM removal

23/00573/FL

Approved - 09 May 2023

Vacation of premises and removal of external ATMs with apertures infilled with stonework to match existing. Removal of all CCTV, signage and marketing from building

23/00120/FL

Refuse - 09 March 2023

Vacation of premises and removal of external ATMs and cover exposed apertures with steel plates. Removal of all CCTV, signage and marketing from building

17/01391/AT

Approved - 13 July 2017

3no Illuminated fascia signs

16/03418/AT

Approved - 11 January 2017

4no fascia signs, 1no projecting roundel

16/01594/FL

Approved - 18 July 2016

Retrospective Application: New shop front including entrance door

16/01595/AT

Approved - 18 July 2016

Retrospective Application: New fascia with trough light, internally illuminated KFC letters, internally illuminated box sign and internally illuminated projecting sign

14/04097/FL

Approved - 30 January 2015

Installation of 2no. replacement external ATM machines

10/02596/AT

Refuse - 04 November 2010

Illuminated fascia and projecting signs

09/02405/AT

Approved - 10 November 2009

4 internally illuminated replacement fascia signs

09/02136/ORM

Approved - 13 October 2009

Minor amendment to entrance ramp approved under planning permission TM/07/03914/FL (modification of existing entrance including new entrance door, lowering existing door threshold and the construction of an internal ramp all to provide DDA access)

07/03914/FL

Approved - 16 January 2008

Modification of existing entrance including new entrance door, lowering existing door threshold and the construction of an internal ramp all to provide DDA access

05/02394/AT

Grant With Conditions - 11 November 2005

Installation of new internally illuminated fascia sign and projecting sign

05/02393/FL

Grant With Conditions - 22 September 2005

Alterations to shopfront

05/00905/FL

Grant With Conditions - 28 April 2005

Provide ramp to main entrance, glass infill to entrance doors and power door control

5. Consultees:

5.1 KCC Highways: The proposal does not meet the criteria to warrant involvement from the Highway Authority

5.2 EA: Currently, further details are required in order to make the prior approval application acceptable. If the information cannot be provided within sufficient time for us to review and respond within the 56 days you have to respond (or period you have agreed in writing with the applicant) we will be objecting to the application.

A Flood Risk Assessment (FRA) prepared by Contaminated Land Solutions ref 2656 dated 12 July 2024, has been submitted in support of the proposal. Unfortunately, only an Executive Summary has been provided and this lacks sufficient detail to demonstrate the proposed development can be made safe in regard to flood risk.

The existing building is on the boundary of Flood Zone 3 and 2 and so potentially, at high risk of internal flooding. The FRA suggests the site level is "about 22.8mAOD". However, no topographic survey has been provided to confirm precise external or internal levels. Neither has any detail of the proposed Finished Floor level (FFL) been provided and therefore, we are unable to confirm whether the proposed conversion will be at risk to internal flooding or not.

The FRA suggests a design flood level of 23.28mAOD. We agree this to be a reasonable estimate of the design flood level at this location whilst still taking the presence of local flood defences into consideration. This means if the suggested external ground level of 22.8mAOD is correct, the proposed groundfloor apartments will be at risk of internal flooding, placing occupants at risk with no means of escape to a higher level within the curtilage of their dwelling.

Whilst flood barriers have been proposed for the doorways, this would not be acceptable when other measures to minimise the risk of internal flooding have not been considered. Flood barriers and other property flood resilience measures are also less likely to be effective in buildings of multi occupancy unless they can all be deployed at short notice by a designated person.

A detailed FRA should be provided which demonstrates flood risk can be safely managed. As a minimum, this should include the following:

- A detailed topographic survey to mAOD, extending across the site and surrounding area, including external ground levels by existing and proposed entrances.
- Confirmation proposed FFLs will be set above the design flood level of 23.28mAOD, plus a suitable allowance of freeboard.

If the groundfloor level cannot be raised sufficiently high enough to provide freeboard, consideration could be given to duplex apartments with all sleeping accommodation at first floor. We would also have no objection to residential units restricted to the first floor and above.

Once an appropriate FRA which demonstrates the risk of flooding can be safely managed, including minimising the risk of internal flooding, has been submitted, we may be able to reconsider the objection.

5.3 EP: Noise - these premises are adjacent to a restaurant/takeaway. The plant and equipment serving those premises will not have been designed to take into account this residential development and so it is likely that noise and odour from the restaurant/takeaway will be an issue here. In line with the agent of change principles, it will therefore be necessary for the applicant to provide suitable reports covering

1. Noise from nearby plant and equipment to ensure levels do not cause detriment to the amenity of future residents in this location
2. Odour from nearby ventilation equipment demonstrating that its design meets the recommendations of the EMAQ+ document 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems'

Contamination - the submitted report was produced following pre-app advice obtained from the Environment Agency regarding their concerns over chlorinated solvents within the groundwater in this part of Tonbridge. It adequately reviews the

history and environmental setting of the site. All proposed works are internal so any contamination present will not be disturbed, however it is recommended that an assessment for vapours is undertaken. I agree with this proposal subject to recommended planning conditions.

5.4 Neighbours: 4 objections raising the following issues (summarised)

- This is a prime location on the bank of the river which should be used commercially for restaurant or other use. A beautiful and historic building in the heart of Tonbridge should be a cultural use not flats
- Not suitable for residential use owing to noise from summer music on the riverside and events in the castle
- Absence of parking
- Already a significant number of flats within the town
- The prices these flats will not allow local people to reside in them and serves only to line the pockets of a developer
- Impact on public services such as schools and doctors

6. Determining Issues:

Class MA - commercial, business and service uses to dwellinghouses

6.1 Firstly, it needs to be considered whether the proposed change of use meets the requirements of permitted development contained within Class MA, of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The following table sets out the relevant requirements of this class of permitted development and whether the proposal is compliant. It also confirms whether the permitted development rights exist for this site.

MA.1 (1) Development <u>is not</u> permitted by Class MA if –	
<i>NB: (a) and (c) removed under the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2024</i>	
(b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;	The building was previously used as a bank (A2)
(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;	N/A

<p>(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;</p>	
<p>(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;</p>	N/A
<p>(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</p>	N/A
<p>(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</p>	N/A
<p>Are the relevant PD rights for this property intact</p>	YES
<p>(2) The classes mentioned in sub-paragraph (1)(b) are the following classes of the Use Classes Order— (a) the following classes of the Schedule as it had effect before 1st September 2020— (i) Class A1 (shops); (ii) Class A2 (financial and professional services); (iii) Class A3 (food and drink); (iv) Class B1 (business); (v) Class D1(a) (non-residential institutions – medical or health services);</p>	

(vi) Class D1(b) (non-residential institutions – crèche, day nursery or day centre);
 (vii) Class D2(e) (assembly and leisure – indoor and outdoor sports), other than use as an indoor swimming pool or skating rink;
 (b) on or after 1st September 2020, Class E (commercial, business and service) of Schedule

6.2 In light of the above, the proposed change of use can be undertaken under Class MA, of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

6.3 As the proposal meets the initial requirements, an assessment now needs to be undertaken as to whether the proposal requires the prior approval of the authority, as set out in paragraph W of Part 3 of Schedule 2 of the GPDO 2015. If the prior approval of the authority is deemed to be required, an assessment is to be undertaken as to whether the prior approval should be granted or refused. The following table sets out this assessment.

MA.2 (1 & 2) Development under Class MA is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to –	
(a) transport impacts of the development, particularly to ensure safe site access;	The Highway Authority has offered no comment. The site lies in the town centre, close to public transport links and services. The absence of car parking in this instance is acceptable and the proposal would not have an adverse impact on wider highway safety.
(b) contamination risks in relation to the building;	The submitted Phase 1 Environmental Report concludes that there is a moderate to low risk of potentially significant contamination. However no specific objection has been raised by EP, and the proposed conversion does not involve works which would be likely to disturb areas of ground contamination. In addition, the previous use of the building as a bank is not associated with any unusual risks of contamination which could not be dealt with by planning condition.
(c) flooding risks in relation to the building;	The EA raise objection - owing the absence of sufficient information it is not possible to confirm whether the proposed conversion will be at risk to internal flooding.
(d) impacts of noise from commercial premises on the intended occupiers of the	A restaurant and take way (KFC) adjoins the building to the south. EP has raised concerns regarding the potential impact from noise and odours from the adjacent

<p>development;</p>	<p>mechanical ventilation/extraction system serving this use. It is acknowledged that odour is not a consideration under this class, however the absence of any noise report to demonstrate a suitable aural environment can be achieved for future occupiers renders this element of the proposed change of use unacceptable.</p> <p>NB: The agent is aware of the concerns and has offered to submit additional information.</p>
<p>(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;</p>	<p>The building is located in a CA and the proposed change of use involves the conversion of the ground floor to residential use. It is noted that there would be limited external alterations, except for the addition of a new doorway which would require a separate grant of planning permission. Nevertheless, the loss of a commercial use at ground floor will have an adverse impact on the overall character and sustainability of the CA.</p> <p>As specifically detailed in section b) of paragraph 203 of the NPPF, LPAs should take account of the positive contribution that the conservation of heritage assets can make to sustainable communities including their economic viability.</p> <p>The application site lies across the river from the Castle which is a designated Ancient Monument and the focus of the wider CA. The application site immediately adjoins the vibrant riverside and bustling high street. The riverside provides a valuable setting for a variety of social and cultural events. The application site therefore occupies not only a significant location within the CA but the town as a whole. The introduction of residential use at ground floor level will detract from the overall vibrancy and function of the riverside area, set within the CA. The application would therefore have a negative impact on the character and sustainability of the CA.</p>
<p>(f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;</p>	<p>The proposal does not involve any alteration to the existing fenestration arrangements (although, as noted above, the proposed drawings show an additional doorway). Whilst most habitable rooms would receive suitable amounts of natural light, there is doubt as to the ground floor bedroom of proposed flat 2. This window is</p>

	<p>on the north west elevation and there is a wall which extends beyond the façade of the main building (not shown on the drawings) which would obscure light from the north. In addition, natural light would also be reduced from the one and half storey outshot to the south west. The lack of natural light to this window renders this element of the proposed change of use unacceptable.</p>
<p>(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; and</p>	<p>N/A</p>
<p>(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; and</p>	<p>N/A</p>
<p>(i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building</p>	<p>N/A</p>

6.4 The proposed development requires the prior approval of the Local Planning Authority. The proposal has been assessed with regard to the relevant provisions within Class MA and found to be unacceptable in terms of potential flood risk, noise impacts from nearby commercial activities, an adverse impact on the character and sustainability of the Conservation Area and a lack of natural daylight to all habitable

rooms. I must therefore recommend that prior approval is refused for the following reasons.

7. Recommendation: Refuse for the following reasons:

1. The proposed change of use application fails to demonstrate that the risk to internal flooding can be overcome and therefore fails to comply with section (c) of MA.2 (2) of Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
2. The proposed change of use application fails to demonstrate that the noise impacts from the nearby commercial premises would not have an adverse impact on the aural amenity of the intended occupiers and therefore fails to comply with section (d) of MA.2 (2) of Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
3. The proposed change of use application would have a detrimental impact on the character and overall sustainability of the Conservation Area and therefore fails to comply with section (e) of MA.2 (2) of Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
4. The proposed change of use application would not provide adequate levels of natural light to all habitual rooms, specifically the bedroom of Flat 2 and therefore fails to comply with section (f) of MA.2 (2) of Class MA of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).