

Officer Report

Application No.	22/0400/FH/PA
Site Address	38 Sandgate Road, Folkestone, CT20 1DW
Officer Name	Katy Claw
Proposal	Determination as to whether the prior approval of the Local Planning Authority is required under Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the change of use from Class (E) first floor storage area to 2 x 1 Bed 1 person self contained flats Class (C3). Minor works to the ground floor access, with bin & cycle storage and the addition of 5 new windows to match existing on the first floor.

Recommendation

Report Number	RD-428455
Recommended Decision	Recommended to be Refused
Recommendation Date	12 May 2022

Report

SITE VISIT

A site visit was not carried out. The information and photographs submitted as part of the application are sufficient and a visit to the site was not considered to be necessary in this case.

SITE

The application site is located in the centre of Folkestone's primary shopping district.

The building subject of this application is a two storey end block with the ground floor operating as a retail shop with associated storage/staff room on the upper first floor level. The unit is currently trading as 'F.Hinds' Jewellers.

The building is situated along Sandgate Road with the main public shop entrance being located in Sandgate Road but there is also a separate side entrance from Alexandra Gardens which is not for general public use.

The site is not located within Article 2(3) land.

HISTORY

Y19/0327/FH – Change of use of part of the ground floor and first floors from retail (Class A1) to residential (Class C3) to create 2 self-contained flats.
Refused

PROPOSAL

This application is for determination as to whether the prior approval of the Local Planning Authority is required under Part 3, Class G (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the development consisting of a change of use of a building from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats.

CONSULTATION RESPONSES

Folkestone Town Council noted the submission and commented that the committee is unhappy about increasing the pressure on the town parking.

Environmental Health has no objections subject to a condition regarding the submission of an acoustic report.

Kent Highways Authority has no comments to make

Environment Agency says that the site has a low environmental risk and therefore has no further comments to make.

REPRESENTATIONS

None received

PUBLICITY

Letters sent. Expiry date 10.04.2022

APPRAISAL

Part – Changes of Use

Class G – commercial, business and service or betting office or pay day loan shop to mixed use

Permitted Development –
G.

(a) development consisting of a change of use of a building from a use within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order, to a mixed use for any purpose within that Class and as up to 2 flats;

Conditions -

G.1 - Development is permitted by Class G subject to the following conditions –

(a) some or all of the parts of the building used for a use within, as the case may be, article 3(6)(n) (betting office) or 3(6)(o) (pay day loan shop) of, or Class E of Schedule 2 to, the Use Classes Order is situated on a floor below the lowest part of the building used as a flat – PASS – the two proposed flats are to be located solely on the first floor, above the ground floor retail unit.

(b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat – PASS – the proposed living accommodation is to be located solely on the first floor.

(c) a flat must not be used otherwise than as a dwelling (whether or not as a sole or main residence)

–

(i) by a single person or by people living together as a family, or

(ii) by not more than 6 residents living together as a single household (including a household where care is provided for residents) – PASS – the flats are of a size that would accommodate 1-2 persons and the applicant has confirmed at section 4 of the application form that the flats would not be used other than as a dwelling.

(d) before beginning development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to –

(i) contamination risks in relation to the building – PASS – the applicant has confirmed at section 5 that there are no contamination risks to this development. Although the application lacks any official contamination surveys in support, it is accepted that the previous use, as a storage area in connection with the retail business at ground floor, would have posed very little risk of contamination of the site and there are no groundworks proposed.

The Council's Environmental Health department have been consulted and they have not raised any concerns with potential contamination.

In conclusion it is accepted that contamination risks at this property are negligible.

(ii) flooding risks in relation to the building - PASS – the site is located within flood zone 1 and therefore at very low risk from tidal flooding. All sleeping accommodation is to be located at first floor.

(iii) – impacts of noise from commercial premises on the intended occupiers of the development – PASS – the applicant has confirmed at section 5 of the application form that the new floors will be double boarded with high level acoustic barriers to prevent any noise from the unit below. In addition to this the Council's Environmental Health team has requested a condition requiring an acoustic consultant's report be submitted and approved by the LPA.

(iv) the provision of adequate natural light in all habitable rooms of the dwellinghouses – FAIL – the submitted proposed floor plans and elevations show that all habitable rooms would have access to natural light but that this can only be achieved by the installation of 5 windows on the side (north-eastern) elevation at first floor.

Class G GPDO only permits 'development consisting of a change of use' and does not make allowances for other alterations to the buildings in order to achieve that change of use.

Part 7, Class A of the GPDO refers to non-domestic extensions, alterations etc and sets out what works are permitted for commercial, business or service establishments. Permitted development under this class is subject to conditions.

Condition A.2(a) of Part 7, Class A says that 'any alteration is at ground level only'.

It is concluded that the 5 first floor windows as proposed under this submission require planning permission and planning permission would need to be sought and approved by the LPA before any 'prior approval' under Part 3, Class G GPDO could be granted.

(v) – arrangements required for the storage and management of domestic waste – PASS – a communal and secure area for the storage of domestic waste is shown located at ground floor on the proposed floor plans.

Conclusion

Having assessed the application the submission does not meet the criteria of Schedule 2, Part 3, Class G of the Town & Country Planning (general permitted development) Order, 2015 (as amended) and therefore does not constitute permitted development on the grounds that there is no provision within Class G that would permit the associated building operations consisting of the installation of the 5 first floor side elevation windows. These windows are required in order for the development to meet Part 3, Class G.1(d)(iv).

HUMAN RIGHTS

I have also taken into account the human rights issues relevant to this application. In my view, the Assessment section above and the Recommendation represents an appropriate balance between the interests and rights of the applicant (to enjoy his land subject only to reasonable and proportionate controls by a public authority) [and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties)] and the wider public interest.

PUBLIC SECTOR EQUALITY DUTY

In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Case Officer:

Report and draft decision notice completed and passed to senior officer.

Name: Katy Claw Position: Planning Officer Date: 12.05.2022

Report and draft decision notice amended (if appropriate)

Name: Position: Date:

Senior Officer

Report not agreed. Details of further work required as follows:

Name: Position: Date:

Report and draft decision notice agreed and file passed to admin to issue decision.

Name: Helena Payne Position: DM Team Leader Date: 12.5.2022

Recommended Refusal Reasons (1)

1

The existing building is not capable of meeting the criteria of Schedule 2, Part 3, Class G.1(d)(iv) of the Town & Country Planning (general permitted development) Order, 2015 (as amended) and does not constitute permitted development on the grounds that there is no provision within Class G that permits the building operations necessary to install the 5 first floor side elevation windows. The windows require, and do not benefit from, the express grant of planning permission, their insertion into the flank of the building would therefore be unauthorised and as such the habitable rooms they would serve would not receive adequate natural light.