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Kings Hill

Proposal: Change of use of control tower to restaurant, delicatessen, Members' lounge with private dining and conference facilities, erection of single storey additions and creation of outside terraces

Location: Control Tower Alexander Grove Kings Hill West Malling Kent

Applicant: Rouse Kent Ltd, Mr D Wright + Mr P Cornwell

1. Description:

- 1.1 The proposed two single story flat roof extensions would be located on each side of the Control Tower building. Both of these additions would also contain basement areas which would be used for food preparation, storage and staff rooms.
- 1.2 At ground floor level, one of the side additions would contain the delicatessen, and the other the kitchen. The ground floor of the existing Control Tower would contain the restaurant including a dining bar and crustacean tank. Customer toilets would be contained also at ground floor level to the rear of the main restaurant. Two terraces would also be created, one to the rear of the delicatessen, and the other to the front of the building. Access to the upper floor would be via the existing internal staircase towards the rear of the building.
- 1.3 At first floor level, the Control Tower would contain a members' lounge area and a meeting room. Toilets would also be provided on this floor towards the rear of the building. The submitted plans show the provision of a roof terrace over the proposed south addition (above the delicatessen). The roof of the other addition would contain air conditioning/kitchen extract plant hidden within parapet walled housing.
- 1.4 The second floor would contain a conference/private dining room complete with a separate food preparation area and balcony.
- 1.5 The applicant's agent has submitted a letter in support of the application in which it is requested that the premises as a whole be allowed to operate until at least 03.00. However, the applicants' agent has also confirmed that the ground floor terraces would not be used at such times of the day. In the case of the rear terrace next to the delicatessen, this would not be occupied/used after 20.00 and the front one would not be occupied/used after 23.00. In this statement it is also stated that no live music would be played on the balconies and terraces, but requests that amplified music be allowed to play on the terraces at an agreed level for a trial period of one year.

2. The Site:

- 2.1 The site lies within an area of the Kings Hill policy area designated specifically for mixed use development including higher density house, retail uses, community facilities and business uses. The site lies approx. 40m north of Queen Street, 70m west of Fortune Way and 30m east of the Doctors Surgery in Kings Hill.
- 2.2 The building is a grade II listed former RAF control tower built in 1939-40 in the Art Deco style, now in an advanced state of disrepair. The list description for this building describes it as being the best example of this type of control tower after Swanton Morely.

3. Planning History:

- 3.1 TM/04/02578/LB Granted 16.12.2004
Listed Building Application: Change of use of control tower to restaurant and bar including single storey extensions.

4. Consultees:

- 4.1 PC: Members had the following concerns:

- No site plan was included.
- No access details were attached.
- No details were given about car parking arrangements.
- As the application contains various levels, it is recommended that a lift is included in the plans.
- There was concern that noise levels from the Control Tower could effect the residential properties close by.

The application shows that there is an open first floor terrace and if music is played inside this will travel outside through open doors and windows.

This is of particular concern in the evening, as there is a residential area opposite, which would be undoubtedly effected by noise levels. In addition, customers leaving the premises will also create inevitable noise through talking, car door slamming and vehicles moving away.

We would hope that any licence that is granted would take into consideration the noise levels that may occur and restrictions would be included so that disruption is kept to a minimum, bearing in mind that there is a residential area close by.

- 4.2 KCC (Highways): The details now show the proposal to include a delicatessen, members lounge with private dining and conference facilities along with outside terraces. I would raise no objections.
- 4.3 DHH: The environmental health issues here are noise and odour. The Control Tower is located on the edge of the Central Area. It is within a few metres of housing that is currently under construction and land that is not yet developed, but is allocated for housing in the Master Plan. In connection with the undeveloped land, the approval of the current application for the Control Tower is likely to be a material influence on future development. At the least it is likely to mean the use of single aspect orientation to place habitable rooms and private amenity space on elevations that do not face the Control Tower. The applicants' agent indicates that this has been discussed with potential developers of the adjacent housing site.

In my view the acceptability of the use of the Control Tower as now envisaged is finely balanced. To be acceptable it will need to be subject to stringent conditions and careful management in order to avoid causing unacceptable detriment to residential amenity. I am particularly concerned about the impact of the use of the external balconies, terraces and staircases and the proposed opening hours of up to 03.00

- 4.4 Private reps (including Site and press Notices): 2/0X/0S/26R. The reasons for objecting are:
- The proposed opening until 03.00, which would cause serious detriment to the amenity of neighbouring residential properties due to noise disturbance at such times of the day.

It should also be pointed out that many of the local residents have also stated that they support the principle of the proposed use.

5. Determining Issues:

- 5.1 The main issues to consider with this proposal is the impact of the development upon the residential amenity of neighbouring properties and issues surrounding the desirability of safeguarding a very important Grade II Listed Building.
- 5.2 As has been stated in section 1 of this report, the site lies within the Kings Hill Policy Area. Specifically, the site also lies within part of this area which is designated under policies P2/2 (e) and P5/23 of the TMBLP where mixed use development including residential, business and retail uses are acceptable. The Master Plan for the development of Kings Hill also shows that the site of the Control Tower to be located within the central area of Kings Hill. Therefore, the use of this property as a food and drink establishment is entirely acceptable in principle provided that adequate protection can be achieved in terms of the wider impacts of the use proposed.

- 5.3 The major concern with this application centres on two particular matters. One is the proposed opening hours (until 03.00) and the second relates to the playing of amplified music on the terraces. The DHH is concerned that, were the premises be allowed to operate until 03.00 and have music playing outside the building, this would cause significant detriment to the amenity of local residents. These comments were made not only in the context of existing residential properties in the locality (and those currently under construction in Area 36B in front (to the south east) of the Control Tower site, but also that the land immediately adjacent to the Control Tower site is also likely to be developed incorporating residential properties and in accordance with the Master Plan layout set out at the time of the 1997 permission for some 1300 houses. In fact an application is currently with the Borough Council seeking approval for the construction of 23 residential units on this land (areas 36A, 37A and 37 B). The DHH has recommended a 12.00 midnight closing time and that no music be played (amplified or live) outside the building.
- 5.4 In considering the acceptability of the proposal, the following information may prove helpful to Members of the Committee.
- 5.5 The historical and architectural importance of the Control Tower cannot be underestimated. English Heritage in writing the List description of this building describes as the second most important example of this type of building in the country. The building, has however, inevitably deteriorated through lack of long term use and would require a significant amount of investment to bring it back into use as a functional building.
- 5.6 It also has to be borne in mind that the scheme before the Council to determine is the only formal submission that the Council has received since permission was granted to redevelop the old Air Station. It may, therefore, be unlikely that another scheme would come forward in the near future to bring the Control Tower back into use were this scheme to fall through. This is a key element in the balancing of judgement in this matter.
- 5.7 Members may well be aware that other food and drink establishments within the central Area of Kings Hill are not conditioned to close no later than midnight. However, it must also be pointed out that the Control Tower is situated at the edge of the central area of Kings Hill, closer to existing and proposed residential properties than any of the existing food and drink premises within Kings Hill.
- 5.8 The Borough Council and the applicants have spent a great deal of time and effort in order to seek common ground and a way forward that would be mutually acceptable. However, the applicants insist that they need, for the proper functioning of the proposed business, to be open until 03.00, although the reason behind this has not been made overtly clear within the application documents.

- 5.9 It is perhaps also useful to look at the nature of the proposed business as well. The proposal is not for a public house. A restaurant and delicatessen open to members of the public would occupy the ground floor. The kitchen would also be located on this floor. A members' lounge and meeting room would be located at first floor with a private dining/conference room located at second floor level. There will, therefore, be a booking system and membership checks in operation in parts of the building. It is likely, therefore that the nature of the use of the premises and the intended clientele would be different to that associated with a traditional public house or other vertical drinking establishment.
- 5.10 With regard to the issue of playing amplified music on the terraces, the applicants have suggested allowing amplified music outside the building for a trial period and at a level to be agreed with the local planning authority. Whilst the DHH has reservations over this, it is an avenue that is perhaps worthy of exploring. I am satisfied that if an acceptable level of noise cannot be agreed, sufficient controls under the planning system would exist to protect the amenity of neighbouring residential properties.
- 5.11 A similar approach could be taken with regard to the issue of opening hours. I believe it would be possible to impose a condition which allows for the business to operate until 03.00 for a trial period which would enable the local planning authority to monitor any complaints received from local residents arising from such extended opening hours. In terms of the trial period this should cover the summer period as this is when there is greater potential for conflict to occur to the amenity of neighbouring residential properties. The trial period should also relate to the nearest residential properties that would/could be affected by the 03.00 opening hours. To this end, if members are minded to approve this course of action, it would be most useful to relate the trial period to the occupation of residential properties in area 36B (currently under construction and any residential properties approved in the future in areas 36A, 37A, and 37B). An application for approval of reserved matters relating to the erection of 23 units within these areas is currently under consideration by the Borough Council (TM/05/02620/FL).
- 5.12 Noise disturbance could also arise from the use of the first floor terrace and second floor balconies. It may therefore be prudent to consider either limiting the activities/time when they could be used and/or the use of acoustic screening to mitigate any noise arising from the use of these areas.
- 5.13 Whilst the principle of the proposed use for the Control Tower is acceptable in broad policy terms, the operational requirements of the applicant have met serious objections from local residents, the Parish Council and the Councils DHH. However, Members will need to balance the needs of the local residents in this part of Kings Hill (and indeed future residents as well) against the need to preserve a very important Grade II Listed Building. I do believe that the use of suitably worded temporary controls would be one approach that would enable the Local Planning Authority to safeguard the amenities of the local residents whilst

allowing the business to operate and prove itself. It would, after all, be in the applicants' best interest to demonstrate for everyone's benefit that their business would not cause undue detriment to the amenities of neighbouring residential properties. I am also satisfied that such controls would comply with the tests contained within Circular 11/95 (i.e. being relevant to planning, relevant to the development concerned, enforceable, precise and reasonable).

5.14 Turning to other issues. Kent Highways has not objected to the proposal. In light of the nature of the proposed development, it is likely to attract patrons from beyond the Kings Hill Area. Parking would take place within the communal car parking areas within the central Area of Kings Hill. No details have been provided with regard to how the facility would be serviced – there does not appear to be any vehicular access to the site itself. Such details could be required by condition.

5.15 In terms of the external alterations, the scheme is very similar to the one granted Listed Building Consent under TM/04/02578/LB. The main difference being that the enlargement to the second floor accommodation. The external works as a whole, would, in my opinion, not detract from the appearance of this building or the visual amenities of the locality. Of course, as the current proposal differs from that which was granted Listed Building Consent earlier this year, it would also need to be the subject of a new application for Listed Building Consent.

5.16 In light of the above, I would recommend that planning permission be granted.

6. Recommendation:

6.1 **Grant Planning Permission** as detailed in letter dated 17.06.2005 and plan nos. 2765.01.A, 02.A, 03.A, 04.A, 05.A, 06.A, 07.A, 08.A, 09.A, 10.A, 11.A and site location plan date stamped..... subject to:

- A final conclusion as to the appropriate mechanism to ensure suitable controls for the temporary extended hours and;
- The following conditions:

1 The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2 No development shall take place until details of acoustic screening to the ground and first floor terraces have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details. The approved screens shall be installed prior to the first use of the premises and thereafter shall not be altered or removed without the prior consent of the Local Planning Authority. (D008)

Reason: To ensure that the development does not harm the character and appearance of the existing building, visual amenity of the locality or the residential amenities of neighbouring properties.

- 3 The ground floor terrace adjacent to the delicatessen shall not be used outside the hours of 09.00 to 20.00 on any day.

Reason: In the interests of the residential amenity of neighbouring properties.

- 4 The ground floor terrace adjacent to the restaurant shall not be used outside the hours of 0-9.00 to 23.00 on any day

Reason: In the interests of the residential amenity of neighbouring properties.

- 5 No tables or chairs shall be placed upon the first floor roof terrace or the first and second floor balconies.

Reason: In the interests of the residential amenity of neighbouring properties.

- 6 The first floor roof terrace, first and second floor balconies shall not be used outside the hours of 09.00 to 23.00 on any day.

Reason: In the interests of the residential amenity of neighbouring properties.

- 7 The business shall not be carried on outside the hours of 07.00 to 03.00 for a trial period of one year. For the purposes of this condition, the trial period shall commence on the date of the first occupation of the first dwelling constructed within Areas 36A, 37A, 37B Kings Hill (as defined on application TM/05/02620/RM) that is completed following the opening of business the subject of this application. Following the completion of the trial period, the business shall not be carried on outside the hours of 07.00 to 00.00 on any day unless otherwise agreed in writing by the Local Planning Authority. (1003)

Reason: To avoid unreasonable disturbance to nearby residential properties.

- 8 The external staircases shall be used only for emergency access/egress.

Reason: To avoid unreasonable disturbance to nearby residential properties.

- 9 No development shall commence until details of a scheme of acoustic treatment of the building has been submitted to and approved in writing by the Local Planning Authority. The scheme shall contain sufficient information to demonstrate that live or amplified music played within the building shall not be audible beyond the boundary of the site. The approved scheme shall be installed prior to the first use of the premises and thereafter maintained to the satisfaction of the Local Planning Authority.

Reason: To avoid unreasonable disturbance to nearby residential properties

- 10 The use shall not commence until full details of a scheme of mechanical air extraction from the kitchens, which includes odour control measures and arrangements for the continuing maintenance of this equipment and any noise attenuation measures required in connection with the equipment, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before use of the kitchen commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved extraction system is being operated.

Reason: In the interests of the amenities of nearby properties.

- 11 The use shall not commence until full details of all plant, machinery and equipment associated with ventilation, air conditioning and refrigeration, including arrangements for the continuing maintenance of this equipment and any noise attenuation measures required in connection with the equipment, have been submitted to and approved in writing by the Local Planning Authority. The details of such equipment shall be sufficient to demonstrate that noise from these sources shall not exceed NR35 at the site boundary. The scheme of approved plant, machinery and equipment shall be fully installed before use of the building commences and shall thereafter be maintained in strict accordance with the approved details.

Reason: In the interests of the amenities of nearby properties.

- 12 No development shall take place until details of the proposed servicing arrangements have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details. (D008)

Reason: To ensure that the development does not harm the character and appearance of the existing building, visual amenity of the locality or the amenities of neighbouring residential properties.

- 13 The collection of refuse and recyclates shall take place only between the hours of 07.00 to 19.00 Monday to Friday.

Reason: In the interests of the amenities of nearby properties.

- 14 The building and its associated external areas shall be used only for the purposes specified in the application and for no other use unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to enable the Local Planning Authority to control the use of the premises in the interests of the residential amenity of neighbouring properties.

- 15 Any conditions required identifying and controlling the 'trial period' controls for use of external areas.

Informative:

- 1 Any scheme of mechanical air extraction should follow the DEFRA report entitled "Guidance in the control of Odour and Noise from Commercial Kitchen Exhaust Systems", published in January 2005

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