

- 1.4 The apartment would contain an open plan living/dining room, a kitchen, bedroom, bathroom at first floor and the second (master bedroom) at second floor level. It is not proposed to link the occupation of the apartment to persons involved in the operation of the bistro/delicatessen.

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 housing, 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.
- 2.2 The building is a Grade II Listed former RAF control tower built in 1939-40 in the Art Deco style, in an increasing state of disrepair as a result of no long term use. The list description for this building describes it as being the second best example of this type of control tower.
- 2.3 The area surrounding the application site is currently being developed. Residential properties are located between the Control Tower and Fortune Way to the east of the site. The nearest dwelling to the Control Tower would be 20m away from the position of the proposed larger terrace. Other residential development is located on the south side of Queen Street, approximately 50m south of the application site.

3. Planning History:

TM/04/02578/LB Grant With Conditions 16 December 2004

Listed Building Application: Change of use of control tower to restaurant and bar including single storey extensions.

TM/04/02579/FL Refuse 23 November 2005

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.

4. Consultees:

(A) TM/06/01826/FL:

- 4.1 KHPC: Members had the following concerns: The boundary was not shown on the plans and that all plans were inadequate. However, the Parish Council would wish to support the application, but to do so we would require more information, as the information submitted is inadequate and incomplete.

(Further comments)

It is unclear if the access road off Tower View is a private or public road and what easements would be provided for the loading bay of Asda.

- 4.2 DHH: Pollution Control: A previous application was refused on grounds which included noise from the proposed use and hours of operation. It is therefore necessary to consider whether the current proposal has satisfactorily addressed these concerns.

The commercial use of the premises has been scaled down and is now confined to the ground floor. The upper floors are to be used as a single dwelling. This has eliminated several noise sources:

- the lounge, dining and other commercial facilities on the upper floors.
- the commercial use of the first floor terraces/balconies.
- the external staircases previously proposed.

In addition, the hours of use are reduced. The previous application proposed uses up to 03.00 whereas the current proposal envisages a closing time of 22.30 for uses in the building and 18.30 for the external terraces.

However, recently constructed housing is located close to the Control Tower. Housing is consented on an adjoining site and further land in close proximity is allocated for residential use.

Notwithstanding the changes made since the previous refusal, the noise that will arise from the general comings and goings from the premises and the use of the external terraces gives me cause for concern.

- 4.3 KCC (Highways): The revised site location plan number 03/1175/20C now indicates the access route from the control tower to the main road. I am satisfied that the vehicle stated to be the delivery vehicle can negotiate this route.

I raise no objections.

- 4.4 Private reps (including site and press notices) 52/0S/0X/2R: The reasons for the objections are listed below:

- Opening hours. There are strong objections to opening at 07.00, which is out of character with the immediate vicinity which is largely residential. Both Asda and the medical surgery open at 08.00 (Asda opens at 07.30 on Saturdays only). Although the premises may actually open at 07.00, invariably the store will have deliveries and staff arriving before this time that will generate noise

and disturbance for local residents in a generally quiet area. 08.00 is considered much more appropriate and significantly less disturbing.

- Our concern is that having got permission for the bistro that the alcohol licence will allow the bistro to function after the hours stated. Could the opening times be conditioned?
- The property is away from the core commercial centre of the community in a much more densely populated housing area and so residents need to be protected from noise disturbance, smells of rotting food and anti-social behaviour.
- Vehicles servicing the bistro. The application documents refer to one 3.5 tonne vehicle. It makes no mention of the vehicle emptying the bins or delivering food to the restaurant each day which would disturb residents.
- Whilst we are pleased to see that the terraces will be restricted, we are concerned as to how the operators will stop clients from using the terraces.

(B) TM/06/01829/LB:

4.5 PC: Members raised the following concerns:

- The site plan indicates that the access road is the same road which is used to access the back of Asda.
- If this is so, will it be made up so that it is suitable for refuse collection from the Control Tower?
- What will the area between the surgery and the Control Tower be used for?
- The kitchen area does not show a cold room or food storage provisions.

4.6 The 20th Century Society: The Society feels this new design is an improvement, the complicated exterior stairs have been removed and the whole appears clean and crisp now.

It is proposed to replace the high level 'glass box' with a new structure whose footprint would be bigger. We feel that this on balance is not objectionable, especially as the new roof top structure will be symmetrical, in line with the rest of the building.

We are concerned that a new use for the building be found sooner rather than later and feel that the current proposal could be a way forward. It will be important to get more information from the applicant regarding the treatment of the listed building (repairs and alterations); this could be conditioned.

4.7 EH: EH did not object to the previous application and we find this new application acceptable in principle. We would point out though that these proposals, like the last, for understandable reasons suggest some demolition of internal walls. The floor plan of the original building is of interest as an expression of its historical use and the detailing of doors and door surrounds is distinctive. We would suggest that all historic doors and door surrounds should be retained and replaced where necessary and that new doorways should be given appropriate doorways and door surrounds. We note that windows are to be refurbished or replaced but double glazing should not be permitted.

4.8 Private reps (including responses to public notices): 55/0X/0S/1R. The letter raises the same points of concern as those listed in respect of application A.

5. Determining Issues:

5.1 The previous planning application for the change of use of the Control Tower (ref. TM/04/02579/FL) was refused permission because of its impact upon the residential amenities of neighbouring properties in terms of noise and general disturbance. Permission was also refused as it was considered that the external works and alterations would have failed to preserve the setting of this unique Listed Building.

5.2 The main determining issues are, therefore, whether the current scheme overcomes the previous concerns of the Borough Council although ultimately the case must be determined on its own merits.

5.3 In looking at the context of this proposal it was necessary to understand clearly the relationship between the nature and level of the proposed use and its ability to support financially the purchase, restoration and long term maintenance of this Listed Building. For this reason I directed that a (confidential) financial viability statement be provided. This has been analysed by the Council's development viability consultants who advise that, in their opinion, the project is of marginal viability. This is important for, as PPG 15 (Planning and the Historic Environment) indicates, at paragraph 3.8, the best way of securing the upkeep of historic buildings is to keep them in active use. For the majority of buildings this would necessitate economically viable uses if they are to survive.

5.4 This is the background to the assessment of the impacts arising from the proposed uses – the nature and level of the usage is inextricably linked to the financial capacity of that usage to support the building in the long term. Only if the impacts are entirely acceptable, as submitted, can it be accepted that the uses will both be acceptable in amenity terms and ensure the long term protection of the building. If for amenity reasons the use needs to be constrained then this is also likely to challenge the viability of protection of the Listed Building.

5.5 While the use is described as delicatessen and bistro I feel that the plans, especially taking into account the external dining areas, actually show a

domination of the dining function over the delicatessen and the case needs to be assessed on that basis.

- 5.6 With regard to the issue of the potential for impact of these uses on residential amenity, the nature of the proposed use differs from that of the refused planning application. With the current application, the commercial uses are limited to the ground floor only of the building. The submitted floor plans of the proposed development show that over 70 covers would be accommodated within the building and on the proposed terraces. There would be takeaway facilities and a delivery service related to the delicatessen.
- 5.7 The submitted drawings show that 16 covers would be located on the larger terrace and 7 on the small terrace. The submitted drawings also show that 1.5m high glazed acoustic screens would be erected around the periphery of the larger terrace and part of the small terrace (the part facing towards the residential development along Queen Street).
- 5.8 The submitted information states that the business would operate between 07.00 to 10.30 on all days including Sundays and Bank/Public holidays. It is proposed to limit the use of the terraces to between the hours of 07.00 and 18.30.
- 5.9 I still have concerns over the nature of the use of the ground floor of the Control Tower and the terraces. The site, whilst being located within the central area of Kings Hill, is right on the periphery of that area, with much residential development in close proximity to the site. Any development in this locality cannot be allowed to detract from the amenities of the local residents in terms of noise and general disturbance. The operation of a bistro from the ground floor of this building from 07.00 until 10.30 on all days would, in my opinion, detract from the amenities of the nearby residences. Members of staff would arrive before opening times either to commence food preparation or receive fresh produce deliveries. Customers will begin to arrive for 7 00 am opening for early breakfast and leave at or after the proposed closing time with staff leaving even later after the closure of the kitchen and the clearing of the dining areas.. With restaurant uses, it is perhaps inevitable that not all customers would vacate the premises before 10.30 and as such there is likely to be a degree of noise and disturbance after this time – impacting on nearby residences. The DHH has similar concerns.
- 5.10 Whilst it is proposed to limit the use of the terraces to only 18.30 in the evening and erect acoustic screens around them, given the close proximity of the neighbouring residential properties, I share the concerns of the DHH and local residents that their use would be inherently detrimental to the residential amenities of neighbouring properties.
- 5.11 The applications as originally submitted did not show the external terraces. These were added on at a later date. It is clear from the applicant's supporting information that the use of the terraces for the times applied for is crucial to the viability of the whole scheme, as is the extensive bistro element.

- 5.12 As the viability of the proposed development as a whole is considered to be marginal, if the terraces were to be omitted from the proposal and the bistro element reduced in scale in order to reduce the impact of the scheme upon the residential amenity of neighbouring properties, the development would become unviable. This is a problem that I do not believe could be resolved in the context of the current application. While this may not be a reason for refusal of this application, it does mean that the opportunity does not present itself to place limitations on the proposals, for instance to require the removal of the terraces or the reduction of the hours of use of the main building, as the long term protection of the building could not be ensured under such circumstances.
- 5.13 Turning now to the physical alterations to the building, neither English Heritage nor the 20th Century Society have objected to the principle of the proposed alterations. The Borough Council has already accepted the principle of the extensions having granted Listed Building Consent for these under ref. TM/04/02578/LB. These reflect the historic nature of the Control Tower that once had a large fire tender garage on one side and a flare store on the other side of the main building (they were probably later additions). Externally, the alterations to the main building are more sympathetic than those the subject of the refused planning application - with the removal of the external staircases – except in one respect. I believe that the use of the glazed screens around the terraces, which appears to be an attempt to both limit noise impacts and protect diners, is an undesirable feature and no more acceptable than at the time of the last application. The screen around the larger terrace is not fixed to the building. The screen around the smaller terrace is shown to be fixed to the building. The proposed works as a whole would entail altering the character, setting, appearance and internal layout of this unique building in order to accommodate an alternative use, which would be a retrograde step in my opinion. Government advice contained in PPG 15 states at paragraph 3.9 that judging the best use of historic buildings is one of the most important and sensitive assessments that local planning authorities have to make. It also states that this judgement requires balancing the economic viability of the proposed use of the building against the effect of any changes they entail in the special architectural and historic interest of the building. In this instance, as has been stated earlier in this report, I have concerns regarding the viability of the proposed use. Due to this I do not consider that there is any justification for undertaking the proposed alterations to this Grade II Listed Building.
- 5.14 Kent Highways has not objected to the proposed development. 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 parks within the central area of Kings Hill.
- 5.14.1 In light of all of the above, I recommend that planning permission be refused on the grounds that the proposed use of the building would cause detriment to the amenity of neighbouring residential properties and that the applicant has not demonstrated to the satisfaction of the Borough Council that the development

would secure the long term survival of this Grade II Listed Building. I would also recommend that Listed Building Consent be refused on the grounds that in the absence of a scheme that would secure the long term survival of the Control Tower, there is no justification for the proposed alterations to this unique Listed Building.

6. Recommendation:

(A) TM/06/01826/FL:

6.1 **Refuse Planning Permission** as detailed in plan nos. 093/1175/05, 14A, 20C, 21D, 22C for the following reasons:

- 1 The proposed development by reason of the nature of the use, hours of operation and use of external terraces would cause detriment to the amenities of the occupiers of neighbouring residential properties. The proposed development is, therefore, contrary to policies QL 1 of the Kent and Medway Structure Plan and P3/17 of the Tonbridge and Malling Borough Local Plan 1998.
- 2 The Local Planning Authority is not satisfied that the proposed development is economically viable and as such the Local Planning Authority considers that the development would not ensure the long term survival of this unique Grade II Listed Building and as such the proposal is contrary to current government advice contained within PPG 15.

The proposed development would, by reason of the proposed external works and alterations, fail to preserve the setting of this unique Grade II Listed Building and as such is contrary to policy QL8 of Kent and Medway Structure Plan and policy P4/1 of the Tonbridge and Malling Borough Local Plan 1998.

(B) TM/06/01829/LB:

6.2 **Refuse Listed Building Consent** as detailed in plan nos. 093/1175/05, 14A, 20C, 21D, 22C for the following reason:

- 1 In the absence of a scheme that the Local Planning Authority considers would secure the long term survival of this Grade II Listed Building, there is no justification for the proposed works of alteration that would detract from the special architectural and historic interest of this building and as such the proposed works are contrary to Government advice contained within PPG 15 (Planning and the Historic Environment) and policies QL8 of the Kent and Medway Structure Plan 2006 and P4/1 of the Tonbridge and Malling Borough Local Plan 1998.

Contact: Matthew Broome