

**West Malling**                      **568151 157906**                      **15 December 2006**                      **TM/06/04033/FL**  
West Malling And  
Leybourne

Proposal:                      Demolition of existing Magistrates Court and erection of residential retirement development of 10 no. flats with associated parking and vehicular access (for occupation by individuals of 55 years of age and above)

Location:                      West Malling Magistrates Court Police Station Road West Malling Kent

Applicant:                      Beechcroft Developments Ltd

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## **1. Background:**

- 1.1 Members will recall that this application was deferred from the meeting of Area 2 Planning Committee on 1 August so that I might review the evidence that could be adduced to support the areas identified by Members as potential grounds for refusal and to ascertain whether the contribution towards library facilities could be better used to improve the street lighting in Police Station Road, the report back to be accompanied (if necessary) by a report by the Chief Solicitor. My previous report is reproduced as an annex to this report.
- 1.2 The issues that Members identified as matters of concern, and as potential reasons for refusal, included the density of the development, its height, bulk and scale, and the effect upon vehicular and pedestrian safety, particularly having regard to the configuration and narrowness of Police Station Road. I will comment on these matters, so far as is appropriate, later in this report. The Chief Solicitor has also prepared a Part 2 report in this regard.
- 1.3 Subsequent to the Committee meeting on 1 August, further negotiations have taken place with the applicants and they have now revised the application by:
- Reducing the width of the building by moving the gable end wall at the southern end of the building 1.6m further away from the boundary with 2 Abingdon Mews;
  - Reducing the ridge height on the main part of the building by 0.7m, making it 0.3m lower than the roof of 1 Abingdon Mews;
  - Re-arranging the internal layout of the building and reducing the number of apartments by two (ie from 12 to 10).
- 1.4 The applicants have also submitted a substantial amount of additional information in support of the application, and in the light of the issues raised by Members at the previous meeting. The matters raised are summarised below; the full correspondence is available for Members' inspection.

1.5 Letter dated 31 July

- *There is clearly a need for specialist accommodation for those aged over 55 in the Borough; statistical evidence is submitted to support this claim, including that the 2005 Housing and Market Needs Assessment identified a need for up to an additional 669 private retirement dwellings over the next three years, and it is not believed that all of these have been provided;*
- *With regard to reuse collection, the Estate Manager will put out the rubbish and recycling for weekly collection at the road entrance and then return the bins to the bin enclosure;*
- *It is acknowledged that it would be beneficial for local residents if the construction work on this site were to be completed in a similar timescale to the Police Station.*

1.6 Letter dated 13 August

This is a long letter that principally responds to the potential reasons for refusal debated by Members at the previous meeting.

- *With regard to traffic and parking, the former Magistrates Court generated a substantial amount of traffic; there were about 50 full and part-time employees, and parked cars dominated the site;*
- *Comparisons with other similar sites built and operated by the applicants indicate that 14 age-restricted units would generate just 7 peak-hour trips, which is 30% of the former total for the site; using TRICS data for open market apartments, 12 units would generate 14 am/pm peak-hour trips, 61% of the former total;*
- *In latter years the Magistrates Court building operated as a financial collection and administration centre for the Court Service, which is akin to an office, and it is therefore a misconception to say that traffic was concentrated outside peak hours;*
- *Police Station Road is a cul-de-sac and traffic speeds are low; narrow streets and shared surfaces work together to reduce vehicle speeds; in these circumstances there is a low risk to pedestrian safety;*
- *With regard to the age restriction on occupancy, it is submitted that the Council need not necessarily enforce such a restriction and, equally, the fact that the proposal has been put forward on the basis of such a restriction cannot in itself constitute a valid reason for refusal;*
- *Even if the age restriction is imposed, it is anticipated that the majority of residents would be able-bodied and thus no additional issues arise with regard*

*to the apparent concern over the use of Police Station Road as the pedestrian access to the site;*

- The density proposed is 68 dwellings per hectare, which is less than that for the Police Station site (83dph) and surrounding historical development close by (70dph; 130dph); the proposal is for relatively small apartments in a highly sustainable location; dwellings per hectare is not the only (or the most informative) measure of density and it would be unreasonable to refuse permission on the basis of an inappropriate density;*
- The proposed development will be a vast improvement over the Magistrates' Court, in design terms, this having been austere and unsympathetic in the way it engaged with other elements in the Conservation Area;*
- The proposed building has a footprint less than that of the former Court building, and its design is well articulated;*
- The applicants would not object to the financial contribution previously identified for library enhancements to be spent on street lighting instead;*
- Should permission be granted, it would be the intention to progress development as soon as reasonably practical, thereby increasing the likelihood that it can be carried out in conjunction with development of the Police Station site, and reducing the length of time that local residents would experience disruption.*

There is also some detailed analysis of the size and height of the building relative to its neighbours, but much of this detail has been overtaken by the subsequent amendments reducing the size and height of the building.

#### 1.7 Letters dated 14 and 23 August

These are the letters amending the proposal as set out in paragraph 1.3 above. The following is submitted in support of these amendments:

- The number of parking spaces remains 14, which means that there are 1.4 spaces per dwelling. The evidence submitted with the application indicated that in this sustainable location 1 space per dwelling was appropriate, and it is understood that the County Council agree with this, but this improvement should address Members concerns in respect of parking.*
- Although we do not believe there to be any planning benefits to the residents of West Malling we are happy for the Council to remove the age restriction condition if that is what the Members would like.*

- *The application is currently at a density of 68 dwellings per hectare, which is lower than the Police Station site and other developments in the area; these proposals further reduce this to 57 dwellings per hectare.*
- *The relationship with 1 Abingdon Mews is now such that the building is 0.3m lower and is 0.5m further away.*
- *The relationship with 2 Abingdon Mews is now such that the building is 1.6 metres further away.*
- *The bulk, height and massing have all been reduced, with the height reduced by 0.7m and the width reduced to 2.1m. As you know it is our view that the original and current proposals are acceptable in this regard, but the amended scheme addresses concerns expressed by Members at the Committee.*
- *No reduction has been made to the quality of the scheme and we would continue to argue that the scheme would enhance the Conservation Area in which the site lies.*
- *We are willing for the sum of money previously agreed to be expended on County Council libraries to be spent on street lighting.*
- *Consent at the September committee would allow the development of this site to at least in part occur at the same time as the Police Station.*

#### 1.8 Letter dated 30 August

This letter sets out the applicants case that it would not be appropriate for the Council to seek an affordable housing contribution in respect of this development. It was submitted in the light of the receipt by the Council of the Inspector's Report following public examination of the LDF Core Strategy. The following is a summary:

- *Core Strategy policy CP18 will not have the full weight of the Development Plan until adopted on 25 September; until then the relevant policy remains policy P5/5 of the TMBLP (where the threshold for affordable housing is 25 dwellings), although regard has to be had to PPS3 (threshold of 15 dwellings), but the current scheme is below even that level; therefore the council cannot require the provision of affordable housing as part of this proposal;*
- *Notwithstanding that situation, policy CP18 does not require the provision of affordable housing, but rather it says that such provision will be sought; the supporting text says that the policy will be applied on a site-by-site basis, taking account of other matters such as the viability of the scheme; the inherent flexibility of the policy was specifically acknowledged by the Inspector;*

- *Given the further reduction in the number of units (from 14 to 12, and then from 12 to 10), the viability of this scheme is marginal, and a requirement for affordable housing would necessitate the applicants completely reviewing their redevelopment options for the site;*
- *The application was originally submitted in December 2006 and, if the applicants had realised that it would take this long to determine it, they might well have appealed against non-determination and have a decision on that appeal by now; it might be concluded that there was a concerted attempt not to determine the application until such time as the Core Strategy assumed greater weight.*

**2. Consultees (on amended plans):**

**2.1 PC: Members wish to reiterate their previous objections:**

They still wish to see some affordable housing for local people – members are aware of significant community pressure for rural affordable housing, not necessarily for key workers.

They still wish the “over-55s” condition to be removed – they wish to see a balanced age range in our community.

They wish the developer to fund some street lighting.

We note from the agenda papers for Area 2 on 12 September that the applicants are willing for the sum of money agreed for the library to be spent on street lighting. This is obviously good news for the Parish Council as the existing lighting in Police Station Road is owned by us and we are considering upgrading. Can you tell us please how much money would be involved?

**2.2 KCC (Highways): Views awaited.**

**2.3 DHH: Views awaited.**

**2.4 Private reps: Further representations have been received from one local resident, who makes the following comments:**

- We are grateful that the height of the proposed development is slightly lower.
- We are pleased that the number of units has been reduced to ten, two of which are ‘town houses.’
- We are pleased to see that the land adjoining Abingdon Mews, over the listed wall, is to be garden and not parking.

- We are pleased to see that there is no vehicular access to the west of the development.
- We are sorry that so large a development is so near a listed wall in a conservation area.
- We disagree with the developer's statement that traffic will be less than it was in connection with the Magistrates Court. This was mainly limited to staff coming and going, and not at all in the evening or weekend.
- We still feel that the total development of what was really one site – the Police Station and the Magistrates Court – is excessive for a conservation area with little unconcreted open area.
- We believe that increase of traffic in Police Station Road, and the allocated space needed for the increasing number of 'wheelie bins' is unacceptable.
- When inspecting the revised application today, we noticed a paragraph in one of the Developer's letters regarding the age of 50 years as being the minimum age of owners or occupiers of the proposed development. It seemed that the Developer was attempting to get the Council to remove this requirement. Since the plans were first submitted, the minimum age has been given as 50 and would request that this is not lowered.

Any further representations received will be reported in a Supplementary report.

### **3. Determining Issues:**

#### Amended plans

- 3.1 Members will note that the applicants have amended the scheme (as described in paragraph 1.3) in an attempt to address some of the concerns that were expressed at the previous meeting. The reduction in the main ridge height has been achieved largely through lowering the eaves height of the central bay of the building. The effect of this is not only to lower the overall height of the building but also to give it a noticeably less imposing character, because there is a greater differentiation between the appearance of the central portion and the projecting elements to front and rear. To my mind this results in a more pleasing building that is less challenging to its surroundings.
- 3.2 The southern end of the building had been drawn away from the boundary and now sits more or less on the same line as the southern extremity of the now demolished Court building. Not only does this have beneficial impacts in terms of the relationship to no. 2 Abingdon Mews, but it also gives a feeling of greater space around the building. The design and layout of the remainder of the building have been adjusted accordingly to maintain its overall symmetry, and the design quality of the building is not diminished. As a consequence of reducing the size of

the building, the number of dwelling units has also been reduced, and this will have a consequential reduction in the anticipated traffic generation arising from the development and the overall density.

- 3.3 Members will note that when recommending approval of the scheme as it stood at the time of the previous meeting, my judgement on the height and scale of the building was reached “on balance”. The changes that have now been introduced will have a noticeable and beneficial effect on how this building will sit amongst its neighbours, such that this is now much less of a balanced judgement. I believe this amended scheme clearly meet the requirement to preserve or enhance the character and appearance of the Conservation Area.

Postulated reasons for refusal

- 3.4 Whilst it was acknowledged at the previous meeting that the acceptability of the building in terms of its overall visual impact involved subjective judgements, the basis upon which those judgements must be made has clearly shifted in the light of the amended plans.
- 3.5 With regard to density, I believe the case put forward by the applicants (see para 1.6 above) regarding comparative densities in the locality is difficult to find fault with. Members will be aware that it is rarely appropriate to consider numerical densities in isolation without also looking at the overall impact of a proposed development in terms of its physical and visual impacts, etc. With those considerations in mind, and also the further reduction in density following the deletion of two more units, I believe it would be difficult to argue that the density now proposed is inappropriate in this location.
- 3.6 Whilst I acknowledge that Members have concerns over traffic levels in Police Station Road, especially in relation to its width and configuration, the advice from KCC (Highways), even before the latest amendments, was that this development would result in an overall reduction in traffic levels compared to the historic use of the Magistrates Court building. The amendments have the effect of reducing anticipated traffic generation even further, and the points made by the applicants about how the Court building had actually been used are also pertinent. Members will also note that, notwithstanding the reduction in the number of dwellings, the number of proposed parking spaces remains the same, thus increasing the ratio of spaces to dwellings.

Potential age restriction

- 3.7 In the application as originally submitted, the applicants indicated that the scheme was intended for occupation by people aged 55 and over. In the light of the debate that took place at Committee last time, they now take the view that they would be content for this age restriction not to be imposed. (They have indicated informally that they might still choose to aim to market the properties at “older”

people, but that is a management decision for the developer, not a planning issue.) Having given this matter some careful consideration, I have reached the view that in the circumstances of this case there are no planning considerations that would justify the imposition of an age occupancy restriction through conditions on a planning permission. Although the argument has been put forward that such a restriction might have the effect of further depressing the level of traffic generation, I am not convinced that this would necessarily be so for this development and on this site. In any event, Members will note the conclusion reached above that in overall highway terms the proposal is considered acceptable. If Members agree with my assessment, it would be appropriate to amend the application description by deleting the section in brackets – this is clearly what the applicants are inviting us to do.

### Affordable Housing

- 3.8 This is not an issue that was the subject of much debate at the previous Committee meeting, but it arises as an issue for consideration because, in the meantime, the Council has received the Inspector's Report following the Public Examination into the LDF Core Strategy. The effect of this is to endorse the approach to the provision of affordable housing set out in policy CP18 of the Core Strategy. One element of that is to reduce the threshold where affordable housing should be sought and, as West Malling is not within the urban area, the applicable threshold would be five units.
- 3.9 I have noted carefully the applicants' representations whereby they seek to argue that it is not appropriate to seek affordable housing in connection with this scheme in the current circumstances. They are correct in saying (see para 1.8 above) that policy CP18 will not form part of the statutory Development Plan until such time as the Core Strategy is formally adopted by the Council (which it is anticipated will be on 25 September). However, the Core Strategy has now passed through all its statutory stages barring formal adoption and the Inspector's Report is binding on the Council. In these circumstances it is right to give those policies substantial weight. I therefore do not accept the applicants' argument on that particular point.
- 3.10 However, I do recognise that they have reduced the number of units to be contained in the scheme on two occasions (overall from 14 to 10) and, even in the absence of detailed financial appraisals, I believe the point that is made about the viability of the scheme has merit. I am also mindful of the efforts that have been made to reduce the physical impact of the building and, insofar as it is a material planning consideration, the desire that has been generally expressed to see the development of this site proceed in tandem with that of the adjacent Police Station site (so far as this may prove possible and without prejudice to the acceptability of the scheme itself).
- 3.11 In all these circumstances I do not consider it would be appropriate to insist on the provision of affordable housing through this development proposal.



Other potential developer contributions

- 3.12 Members will recall that KCC has requested a contribution be sought from this development towards the enhancement of library facilities in West Malling, and this was reflected in my previous recommendation. Members, however, expressed a preference for an alternative approach, namely a contribution towards the enhancement of street lighting in the vicinity of the site. The applicants have indicated that they would be content with this approach.
- 3.13 I understand that the lighting in Police Station Road is provided by the Parish Council. I also understand that a scheme has been designed for renewing the lighting in this road and that this work is programmed to be undertaken in the near future. Subject to further clarification of the status of this scheme, upon which I hope to report in a Supplementary report, I see no reason from the perspective of the Planning Acts why any contribution that is sought should not go towards street lighting, rather than library provision. Although, as explained above, I do not believe that this development will lead to any overall worsening of conditions in Police Station Road, I think it is reasonable to conclude that there may be an increase in pedestrian movements and in that context enhancement of the street lighting would be consistent with the objectives of policy P7/13 of the TMBLP and sustainability objectives generally (see, for example, policy CP2 of the LDF Core Strategy).
- 3.14 No contribution has been sought by KCC towards education provision. As the site area is less than 0.4 ha, the requirement to make a contribution towards public playing space does not arise.

Conclusion

- 3.15 The amendments that have been introduced have a real impact in reducing the scale and potential dominance of the proposed building. I believe this is sufficient to overcome any concerns that were previously expressed and I therefore reiterate my recommendation that planning permission be granted.

**4. Recommendation:**

- 4.1 **Grant Planning Permission** subject to the following conditions:

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

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

- 2 The development shall be constructed at the level indicated on the approved drawing.

Reason: In the interests of amenity and privacy.

- 3 The building shall be constructed using Ibstock Parham Multi facing bricks for elevations and natural slates for the roof. Details and samples of any other external material, such as alternative bricks for stringer courses, lintels etc, shall be submitted to and approved by the Local Planning Authority prior to commencement of the development. The development shall be carried out in strict accordance with the approved material details.

Reason: To ensure that the development complements the adjacent redevelopment of the Police Station site in the interests of protecting the character and appearance of the existing building and the visual amenity of the locality.

- 4 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate. (L003)

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 5 The use shall not be commenced, nor the premises occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking or garaging of vehicles is likely to lead to hazardous on-street parking.

- 6 No building shall be occupied until the area shown on the submitted plan as a turning area has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved turning area.

Reason: Development without provision of adequate turning facilities is likely to give rise to hazardous conditions in the public highway.

- 7 The first floor windows on the southern and northern elevations shall be fitted with obscured glass and, apart from any top-hung light shall be non-opening. This work shall be effected before the room is occupied and shall be retained thereafter.

Reason: To minimise the effect of overlooking onto adjoining property.

- 8 A condition relating to the upgrading of street lighting (details to be confirmed).

### **Informatives**

- 1 With regard to the construction of the pavement crossing, the applicant is asked to consult The Highway Manager, Kent Highways, Joynes House, New Road, Gravesend, Kent, DA11 0AT. Tel: 08458 247 800.
- 2 The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate number(s) to the new property/ies. To discuss the allocation of numbers you are asked to write to the Chief Solicitor, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or telephone Trevor Bowen, Principal Legal Officer, on 01732 876039. To avoid difficulties, you are advised to do this as soon as possible and, in any event, not less than one month before the new properties are ready for occupation. (Q050)

Contact: Neil Hewett