

1.4 The application has since been amended so that the proposed opening hours are now 08.00 to 21.30 on any day. A large terrace that was formerly proposed to be located on the south-east elevation has now been omitted from the scheme. The applicants have submitted two sets of proposed floor plans, one of which (Option A) shows the retention of a smaller terrace on the north-west side of the building. It is proposed to restrict the use of this terrace to between 08.00 and 18.30. The other option (Option B) omits both terraces entirely from the scheme.

1.5 In a covering letter submitted by the applicants' agent concerning these amendments, it is stated:

“Option B: - This option proposes the same uses, but deletes the rear terrace altogether. Whilst our clients would prefer Option A, they are prepared to accept a permission for Option B, if the rear terrace is deemed to constitute a potential planning or amenity issue of such substance to justify a planning refusal.”

1.6 The plans show a delicatessen that has the ability to provide a bistro facility. The submitted floor plans indicating a layout of over 50 dining covers within the building and seven further covers could be accommodated within the proposed ground floor terrace (Option A).

1.7 The apartment at first/second floor level 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 PC: Members had no objection and fully support the application.

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

The use of the external areas has also been amended. In the option shown on drawing 21F, the external terraces have been completely removed. Option 21E includes a terrace at the rear of the premises. The previous proposal included terraces to the front and the rear.

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 21.30 for uses in the building and 18.30 for the external terrace.

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 terrace gives me cause for concern. I feel the option involving the use of an external terrace is not acceptable and that any consent for the alternative option should be conditioned.

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. 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.

Additional Comments received following latest amendments to the scheme

- Option B is preferred as this involves no outside terraces.

- The Control Tower is too far away from the centre of Kings Hill to attract regular workers within Kings Hill.
- People visiting the existing restaurants do not park in the car parks provide, but park on the road instead, causing obstructions to traffic.
- The proposal would be detrimental to the existing restaurants/coffee shops and sandwich bars in Kings Hill.
- The tower should be restored to show the history of the area.

(B) TM/06/01829/LB:

4.5 PC: No objections.

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: Our draft publication " Conservation principles – policies and guidance for the sustainable management of the historic environment will provide additional advice to that contained within PPGs 15 and 16, with which to consider this proposal. Please refer to our comments made in our letter of 28 June 2006. These comments are:

"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/2R. One of the letters raises the same points of concern to those listed in respect of Application A. The other letter raises issues that are not related to this application for Listed Building Consent. The material planning issue raised by this local resident is referred to in paragraph 4.4 of this report.

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 is 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 viable. 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 actually show a domination of the dining function, particularly with the option to retain a terrace over the delicatessen and the case has been assessed, from all aspects, 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 arising from the earlier 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 50 covers would still be accommodated within the building and on the proposed terrace. There would be takeaway facilities and a delivery service related to the delicatessen.

- 5.7 The submitted drawings show that 7 covers would be located on the terrace (if allowed). The submitted drawings also show that 1.5m high glazed acoustic screens would be erected around part of the terrace (the part facing towards the residential development along Queen Street).
- 5.8 The submitted information states that the business would operate between 08.00 to 21.30 on all days including Sundays and Bank/Public holidays. It is proposed to limit the use of the terrace (Option A) to between the hours of 08.00 and 18.30.
- 5.9 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.
- 5.10 In my opinion, reducing the hours of operation at both ends of the day to the hours as now proposed and with the omission of both of the terraces, are sufficient measures to protect the amenities of local residents. Members of staff arriving before the 08.00 opening time is quite the norm for such uses and is a time of day when local residents would be getting ready to go to work and school. With restaurant uses, it is perhaps inevitable that not all customers would vacate the premises before 21.30. However, a closing time of 21.30 is early enough, in my opinion, to allow the last customers to leave the premises at a time of day when they are unlikely to cause significant disturbance to local residents. Staff will inevitably leave later than customers. However, these will be relatively few in number and due to the lack of car parking adjacent to the building would, I am satisfied that the noise generated by the staff leaving the premises is again unlikely to cause serious detriment to the amenity of nearby residents. There is a need for conditional controls to be applied to prevent noisy after closing activities – for instance disposal of kitchen/restaurant waste and in particular moving/dumping bottles.
- 5.11 Whilst it is proposed to limit the use of the remaining terrace to between 08.00 and 18.30, due to the location of the Control Tower on the periphery of the central area in an area of predominantly residential properties, I share the concerns of the DHH that this element of the proposal would detract from the amenity of local residents, even with the proposed restricted hours of use. I would not, therefore, wish to support this option for the proposal.
- 5.12 A major concern during the course of these applications has been; if the development had to be scaled down to overcome planning/amenity concerns, would it become unviable and therefore could not guarantee the long term survival of this important Grade II Listed Building. The applicants have now, I feel, demonstrated that the scheme including the restoration works and maintenance of

the building once in use would be viable, with or without the terraces, and with the reduced operating hours now proposed.

- 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 a glazed screen around the terrace, 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. However, with Option B that does not contain a terrace at all; the glazed screen would not be a factor to consider.
- 5.14 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, the proposed uses of this building are considered now to be economically viable. The proposed works, whilst they would alter the appearance of this building would, in my opinion, retain its character as an Art Deco control tower. In this instance I now believe an appropriate balance has been struck as the scheme now appears to be economically viable and would not detract from the character and appearance of this Grade II Listed Building.
- 5.15 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.
- 5.16 In light of all of the above, I recommend that planning permission be granted for the option (Option B) that entails creating no external terraces in association with the proposed commercial use of this building. For the reasons specified above, I do not believe the option to create a terrace should be supported.
- 5.17 I also recommend that Listed Building Consent be granted.

6. Recommendation:

- 6.1 **Grant Planning Permission for Option B only**, in accordance with the following submitted details: Letter DGH/BH/5424 dated 16.04.2007, Location Plan 03/1175/20 C dated 18.08.2006, Existing Plans and Elevations 03/1175/05 dated 01.05.2006, Proposed Plans 03/1175/21 F dated 16.04.2007, Elevations 03/1175/22 C dated 01.05.2006, Section 03/1175/14 A dated 01.05.2006, subject to the following:

Conditions / Reasons

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 business shall not be carried on outside the hours of 08.00 to 21.30 on any day of the week unless otherwise agreed in writing by the Local Planning Authority.

Reason: To avoid unreasonable disturbance to nearby residential properties.

3. No vehicles associated with the commercial use of the property shall arrive, depart, be loaded or unloaded within the application site outside the hours of 07.00 to 19.00 Monday to Friday unless otherwise agreed in writing by the Local Planning Authority.

Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties.

4. The collection of refuse and recyclates arising from the commercial use of the building shall take place only between the hours of 07.00 to 19.00 Monday to Friday.

Reason: To avoid unreasonable disturbance outside normal working hours to nearby residential properties.

5. No part of the building the subject of this application shall be occupied until underground ducts have been installed by the developer to enable telephone, electricity and communal television services to be connected to any premises within the site without recourse to the erection of distribution poles and overhead lines and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no distribution pole or overhead line shall be erected within the area except with the express written consent of the Local Planning Authority.

Reason: In the interests of visual amenity and the setting of this Grade II Listed Building.

6. 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.

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.

7. The garage(s) shown on the submitted plan shall be kept available at all times for the parking of private motor vehicles.

Reason: Development without the provision of adequate vehicle parking space is likely to lead to hazardous on-street parking.

8. The use shall not commence until full details of a scheme of mechanical air extraction from the kitchen which includes odour control measures, 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 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.

9. 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 and machinery shall be fully installed before use of the building commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved details.

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

10. At no time shall any external spaces contained within the red line area of the application site be used in connection with the permitted commercial use of this building as a delicatessen/bistro for sitting out on or for the consumption of food and drinks served or purchased within the building.

Reason: In the interests of the amenities of nearby properties

11. No live or amplified music shall be played outside the building.

Reason: In the interests of the amenities of nearby properties

12. Any live or amplified music played inside the ground floor of the building shall not be audible beyond the boundary of the site as shown on plan no.03/1175/20C

Reason: In the interests of the amenities of nearby properties

13. No development shall commence until full details of a scheme of sound insulation between the commercial and residential uses of this building has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the occupation of the residential unit within this building.

Reason: In the interests of the amenities of the permitted residential unit within this building.

Informative

- 1 For the avoidance of any doubt the scheme hereby permitted is the one referred to as Option B s in the letter from the applicants' agent dated 10 April 2007 and as shown on drawing no. 03/1175/21F.

(B) TM/06/01829/LB:

- 6.2 **Grant Listed Building Consent**, in accordance with the following submitted details: Letter MJW/KS/5424 received 01.05.2006, Existing Plans and Elevations 03/1175/05 received 01.05.2006, Section 03/1175/14 A received 01.05.2006, Location Plan 03/1175/20 C received 18.08.2006, Elevations 03/1175/22 C received 01.05.2006, Letter DGH/BH/5424 received 10.04.2007, Floor Plans And Elevations 03/1175/21 F received 16.04.2007, subject to the following:

Conditions/Reasons

- 1 The development and works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: In pursuance of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 2 No development shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

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

- 3 No development shall take place until details of the canopy over the entrance to the building and joinery details of all replacement windows have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.

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

- 4 No development shall take place until details of any joinery to be used have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

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

- 5 The standard of workmanship achieved in the carrying out of the development shall conform with the best building practice in accordance with the appropriate British Standard Code of Practice (or EU equivalent).

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

Contact: Matthew Broome