



- *It is unreasonable in this case, where it appears that a decision would have been made on or before the 1<sup>st</sup> October, to impose a requirement for the provision of affordable housing at such a late stage*
- *The facts set out above amount to strong reasons (material considerations) justifying a decision otherwise than in accordance with Core Strategy Policy CP17.*

**2. Consultees (A) and (B):**

2.1 No further representations have been received.

**3. Determining Issues (A) and (B):**

3.1 Members will note that despite a discussion in the previous report as to why officers were recommending compliance with CP17, the applicant has not used the opportunity offered by Members to respond to any of the points raised therein or indeed to submit any new mitigating circumstances. On the basis of the information available, the following conclusions may therefore be drawn:

- There is no economic justification to demonstrate that the scheme would become unviable as a result of a requirement to provide or contribute towards the provision of affordable housing.
- There are no other obligations for financial contributions being imposed by TMBC on the scheme, (e.g. no contribution to education, public transport, play areas etc.)
- There is no evidence of unduly onerous development costs due for example to site contamination
- Due to separate ownership, there is no apparent connection between funds generated by this scheme and the upkeep or retention of the Listed Building, that is, this is not “enabling development”.

3.2 The main point reiterated by the agent is that the application was submitted before the adoption of CP17 and subject to it not having been called in to Committee, could have been determined before the adoption of CP17 (i.e. before 25 September 2007).

3.3 It is the case that the affordable housing policy became adopted after the application was received although the Inspector’s report stating that the policy was “sound” was received on 16 August 2007. Of course, as CP18, a policy in this form had been in the Core Strategy submission draft since September 2006.

3.4 The applicant is represented by professional planning agents who would have been aware of the emerging policy status and indeed national policy in PPS3 in terms of affordable housing.

- 3.5 The affordable housing policy CP17 was not part of the Development Plan when the previous application was submitted and withdrawn. However, it is a statutory requirement that, decisions must be made in accordance with the Development Plan as it exists at the time of determination unless otherwise justified.
- 3.6 Members are reminded that this is a net gain of 7 dwellings in a relatively unsustainable location. In my previous report, I recognised that there are benefits arising from this scheme (including a positive contribution to the character and appearance of the Conservation Area) that could legitimately be argued to outweigh any doubts as to sustainability of the location and compliance with policy CP13. However, I remain of the view that this should not also be used in mitigation for non compliance with affordable housing policies. Therefore, in the light of CP13 and CP17 now being adopted policies, I am of the view that there is no justification for setting aside a requirement for affordable housing.
- 3.7 Members are advised that there are similarities with a case at Carpenters Lane in Hadlow which was refused by the Area 1 Planning Committee in July 2007 due to non-compliance with the then emerging affordable housing policy in the Core Strategy. That application has since been resubmitted to include provision of affordable housing in full compliance with CP17.
- 3.8 In the light of the above, I am of the opinion that the application for planning permission and Conservation Area consent for demolition can be supported subject to conditions. However, in the light of the applicant's indication that he does not intend to comply with CP17, I suggest a rewording of condition 2 from that previously suggested ensuring that no development can commence until an affordable housing scheme is submitted and approved.

**4. Recommendation:**

(A) TM/07/03032/FL:

- 4.1 **Grant Planning Permission** as detailed by Letter dated 06.08.2007, Certificate B dated 06.08.2007, Notice dated 06.08.2007, Transport Assessment DMC/GD04521 dated 06.08.2007, Tree Report dated 06.08.2007, Design and Access Statement dated 06.08.2007, Site Layout S200 dated 06.08.2007, Location Plan S201 dated 06.08.2007, Site Plan P200 A dated 06.08.2007, Site Plan P201 A dated 06.08.2007, Floor Plans And Elevations P202 dated 06.08.2007, Elevations P206 A dated 06.08.2007, Floor Plans And Elevations P205 A dated 06.08.2007, Floor Plans And Elevations P204 A dated 06.08.2007, Floor Plans And Elevations P203 dated 06.08.2007 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. No development shall commence until a scheme has been submitted to and approved by the Local Planning Authority with regard to the provision of affordable housing. The submitted scheme shall meet the requirements of the Tonbridge and Malling Local Development Framework Supplementary Planning Document on affordable housing, and shall set out a timetable for the provision of the affordable housing. The development shall not be carried out other than in accordance with the approved scheme.

Reason: In order to ensure that appropriate provision is made for affordable housing in accordance with policy CP17 of the Tonbridge and Malling Local Development Framework Core Strategy.

3. The access shall not be used until the area of land within the vision splays shown on the approved plans has been reduced in level as necessary and cleared of any obstruction exceeding a height of 1.05 metres above the level of the nearest part of the carriageway. The vision splay so created shall be retained at all times thereafter.

Reason: To ensure the safe and free flow of traffic.

4. The use hereby permitted shall not be commenced until the existing vehicular access to London Road has been closed permanently.

Reason: To ensure the safe and free flow of traffic.

5. No building shall be occupied until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure the safe and free flow of traffic.

6. Any gateway to the access shall be set back 5.0 metres from the edge of the highway.

Reason: To enable vehicles to stand off the highway whilst any gates are being operated.

7. 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 or 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 of vehicles is likely to lead to hazardous on-street parking.

8. 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.

9. No development shall take place until details of existing and proposed levels of the dwellings and private gardens 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 or visual amenity of the locality.

10. 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 and shall be so retained thereafter.

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.

11. 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.

12. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:

(a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority).

(b) No fires shall be lit within the spread of the branches of the trees.

(c) No materials or equipment shall be stored within the spread of the branches of the trees.

(d) Any damage to trees shall be made good with a coating of fungicidal sealant.

(e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees.

(f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.

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

13. No development shall be commenced until full details of a scheme of acoustic protection of habitable rooms having windows that will be exposed to a level of road traffic noise in Noise Exposure Categories B, C or D as set out in Policy P3/17 of the Tonbridge and Malling Borough Local Plan have been submitted to and approved in writing by the Local Planning Authority. The scheme of acoustic protection shall be sufficient to secure internal noise levels no greater than 30 LAeq dB in bedrooms and 40 LAeq dB in living rooms with windows closed. Additionally, where the internal noise levels will exceed 40 LAeq dB in bedrooms or 48 LAeq dB in living rooms with windows open the scheme of acoustic protection shall incorporate appropriate acoustically screened mechanical ventilation. Mechanical ventilation shall also be provided to bedrooms having openings into facades that will be exposed to a level of road traffic noise in excess of 78 L<sub>Amax</sub> (Slow) time weighting. The approved scheme shall be implemented prior to the first occupation of the dwelling to which it relates and shall be retained at all times thereafter.

Reason: To safeguard the aural amenity of the occupiers of the dwelling(s) hereby approved.

14. With regard to plots 1-4 (incl), 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 development shall be carried out within Class A, B, C, E H, of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of preserving the setting of a Listed Building.

15. With regard to plots 1-4 (incl), 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 development shall be carried out within Class A, C, of Part 2 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.

Reason: In the interests of preserving the setting of a Listed Building.

### **Informatives**

- 1 With regard to works within the limits of the highway, the applicant is asked to consult The Highway Manager, Kent Highways, Joynes House, New Road, Gravesend, Kent, DA11 0AT. Tel: 08458 247 800.
- 2 All works affecting the public highway will be subject to a legal agreement and the safety audit process.
- 3 Surface water from private areas is not to discharge onto the public highway.

(B) TM/07/03033/CA:

- 4.2 **Grant Conservation Area Consent** as detailed by Letter received 06.08.2007, Location Plan S201 received 06.08.2007, Plan PHOTOGRAPHS AND SITE PLAN received 06.08.2007, subject to the following conditions:

- 1 The 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 Sections 18 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 2 The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

Reason: To ensure that the demolition is carried out as a continuous operation with the redevelopment of the site, in the interests of visual amenity.

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