

**West Malling**  
West Malling And  
Leybourne

**567971 157795 10 June 2008**

**TM/08/01699/FL**

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Proposal: Demolition of existing buildings and erection of 3 no. residential dwellings with parking and associated landscaping  
Location: 40 King Street West Malling Kent ME19 6QT  
Applicant: The Executors Of Peter James Viner (Deceased)

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**1. Description:**

- 1.1 Members will recall that this application was deferred from the A2PC meeting on 21 January 2009 for officers to advise as to whether the application accords with Policy CP21 in light of the level of local service provided and the security of tenure of the current occupier. The application was originally deferred from the 17 September 2008 A2PC for a Members' Site Inspection. This was held on 13 October 2008 at 3.30 pm. The report submitted to the January Committee (and supplementary report) are attached as an Annex.
- 1.2 Since the January committee meeting further details and clarification have been sought from the applicants in the form of a supporting letter and plan.
- 1.3 The plan clarifies the detailing around the projection and dormers on the front elevation and does not alter the design of the proposed terrace.
- 1.4 In respect of the supporting letter, this identifies why the applicants believe that the application proposal complies with Policy CP21 and why granting permission would not breach that policy, and identifies the site's status in terms of employment provision. Further information is also submitted in respect of the existing business use and the issues that the applicants believe are relevant to this application.

**2. Reason for reporting to Committee:**

- 2.1 Deferred from APC on 21 January 2009 for officers to advise as to whether the application accords with Policy CP21 in light of the level of local service provided and the security of tenure of the current occupier.

**3. Consultees** (responses received subsequent to previous Committee report):

- 3.1 Private Representations: Two letters of representation have been received from the agents and solicitors representing the current tenant of the site. Concerns have been raised on a number of matters. In particular they identify that the existing site should be safeguarded under policy CP21 and that the existing business provides a community facility, local employment and economic benefits to West Malling. It is also stated that the current use of the site also complies with other employment policies and strategies, particularly those identified in the South East Plan.

3.2 It has also been identified that the tenants have attempted to find other suitable sites without success and negotiations with the owners of the site to renew their lease or buy the site from the owner have failed insofar as that their offer is “on the table” and will not be considered until they know the outcome of the planning application. Their solicitors have identified the tenants position in relation to the lease. They have stated that grant of planning permission will lead to the business having to cease trading.

#### **4. Determining Issues:**

4.1 The main issue to consider in this report is policy CP21 of the Tonbridge and Malling Core Strategy that relates to employment provision within the Borough. The policy states that existing employment sites should be retained and safeguarded if they comply with all three of the following criteria:

- are well located to the main road and public transport network; and
- provide, or are physically and viably capable of providing through redevelopment, good quality modern accommodation attractive to the market; and
- are capable of meeting a range of employment uses to support the local economy;

Therefore redevelopment of sites that comply with these criteria and which would result in non-employment uses will not be permitted.

4.2 There is clearly a significant level of debate as to whether the application site complies with or fails the criteria identified in Policy CP21. The applicants’ agents in the additional information submitted have explained why they consider it does not meet the criteria, whereas the representations from the tenants’ agents and solicitors identify why in their opinion the site fulfils the criteria in policy CP21.

4.3 The applicants’ agents have explained why they consider the site does not meet the criteria identified in CP21 in that it is not well located to the main road network, the highway constraints do not make the site capable of high quality redevelopment and therefore the site is not suitable for a range of employment uses. Consequently they claim that it fails the 3 tests and CP21 does not apply to this site and therefore it is not worthy of being safeguarded. Furthermore they have pointed out that the site is not identified as an employment allocation in the Council’s policy documents and not therefore safeguarded by policies E1 and E2 of the Development Land Allocations DPD.

4.4 However the tenants have submitted representations that the site complies with policy CP21 because the policy states that this type of employment use should be retained and safeguarded as it provides local employment. The existing business on the site also benefits the local community, which provides local employment

and also attracts people to West Malling, who then use other services including Bed and Breakfast. Furthermore the site is in a sustainable location and the forecourt is used by other businesses in the evening. Consequently (it is argued) the employment use on the site benefits the local community and local economy, whilst also providing an essential service to West Malling.

- 4.5 The site is an existing B2 (General Industry) use in a central Rural Service Centre. It is surrounded by residential properties and a number of listed buildings, some of which directly adjoin the site. It is also situated within a conservation area and on a narrow access road that already suffers from problems with access to their site and other surrounding properties. For these reasons I am of the opinion that the site does not and can not comply with the three criteria identified in policy CP21. The reasons for this determination are that it is not well located to the main road due to the poor access arrangements which already cause significant problems for residents and other commercial properties. Redevelopment of the site with modern commercially viable accommodation is not possible due to the restrictions associated with the site as a result of the proximity of residential properties, listed buildings and poor access arrangements. Consequently it is not capable of meeting a range of employment uses.
- 4.6 I appreciate that some objectors have expressed views that differ with my assessment and that in particular the tenants have identified that the existing business supports the local economy by providing local employment, attracting visitors to West Malling and providing an essential service to the community. However planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is clear to me that CP21 does not offer protection to existing businesses whose sites can not comply with the three criteria identified. Therefore it is clear that the proposed development does not conflict with CP21 and therefore the use of this site for employment purposes can not be safeguarded under the terms of this policy.
- 4.7 The Local Development Framework also clearly identifies that poorly located employment sites or sites considered detrimental to residential amenity (by reason of their siting) may be appropriately redeveloped. The application site is not an allocated employment site and therefore is not covered under policies E1 and E2 of the Development Land Allocations DPD. I am also of the opinion that policies RE2 and RE3 of the South East Plan are not directly relevant to the current proposal, as they are given local application through CP21 and other local policies.
- 4.8 In addition to CP21 consideration also needs to be given to policy CP26 of the TMBCS. Policy CP26 seeks to protect and retain community services and facilities, particularly in rural areas but this policy also relates to existing facilities that offer a service to the community. A number of representations have identified that the garage provides an essential service to West Malling and that a large part

of its trade comes from local trade. The tenants agree with this view and have sought to argue that it would be a loss to West Malling and their customers if the business ceased to trade.

- 4.9 However policy CP26 is largely aimed at retaining the only facility of its type within a village and there are other garages within and around West Malling that would be able to provide similar local facilities. Furthermore, whether a local garage that provides MOT and repairs is an essential community facility that plays an important role in the social infrastructure of the area is a matter for debate, but I am of the opinion that this business cannot be supported under this policy. This is because the services provided could be provided at an alternative facility of equivalent quality and scale to meet the identified need. This is either available or could be satisfactorily provided at an equally accessible location. For these reasons the proposed redevelopment of the site also complies with policy CP26 as the existing use cannot be protected as an essential community facility.
- 4.10 CP22 does not apply to this proposal as the site is not within the defined District Centre of West Malling as the existing use is not a retail use.
- 4.11 In terms of other material considerations and the potential loss of the existing business use, Members are advised that it appears the lease negotiations are on hold pending the outcome of this application. In my view, that statement by the tenants' solicitors is not consistent with their claimed fear that the business will cease trading if a planning permission is granted. Notwithstanding that point, current guidance in PPG4 does not protect private business interests as a material planning consideration. Draft guidance in PPS4 requires LPAs to consider proposals favourably unless there is good reason to believe that the economic, social and/or environmental costs of development are likely to outweigh the benefits. Where development is in accordance with the Development Plan it should normally be approved. Policy CP12 of the TMBCS allows for minor development appropriate to the scale and character of the settlement that is not environmentally less sustainable than the existing use. Policy CP21 of the TMBCS only safeguards employment areas for that purpose if they are well related to the main road and public transport network, provide good quality modern accommodation and are capable of meeting a range of employment uses to support the local economy. Therefore development of this site is clearly supported by policy CP12.
- 4.12 Moving onto the suitability of this site for a residential use, again it is sited within a mixed commercial/residential area that adds to the character of West Malling. Residential development of the site is therefore fully in line with Government guidance in respect of the redevelopment of brownfield sites in environmentally sustainable locations and also policy CP12 that states redevelopment will be acceptable within West Malling in principle.

- 4.13 The planning system does exist to control commercial business interests, a fact which is identified at all levels of planning policy. The security of tenure of the occupier is not a planning matter for Members' consideration. This is because planning is part of a system of public law whereas tenancy issues are private law matters between the individuals concerns. Planning cannot therefore consider private law matters in the determination of a planning application and comments made in this respect should have no bearing on the consideration of this application.
- 4.14 Consequently in light of the above considerations and those previously identified in the previous reports, I remain satisfied that this proposal is acceptable and it is therefore recommended for approval, subject to conditions, as it complies with Government guidance in respect of brownfield sites in environmentally sustainable locations, complies with PPG15 in respect of development within Conservation Area and next to Listed Buildings and also complies with development plan policies contained within the Core Strategy, in particular policies CP1, CP12 and CP24. As I have identified the site also fails to meet the criteria set out in policies CP21 and CP26 and therefore can not be safeguarded under these policies.

**5. Recommendation:**

- 5.1 **Grant Planning Permission** in accordance with the following submitted details: Letter dated 12.08.2008, Letter dated 07.08.2008, Proposed Plans DHA/5505/33 A dated 12.08.2008, Elevations DHA/5505/34 A dated 12.08.2008, Section DHA/5505/36 B dated 21.11.2008, Site Plan DHA/5505/40 Rev A dated 21.11.08, Letter dated 28.05.2008, Letter dated 10.06.2008, Planning Statement dated 28.05.2008, Location Plan DHA/6585/20 dated 28.05.2008, Block Plan DHA/5505/30 dated 28.05.2008, Design and Access Statement dated 28.05.2008, Report J10513 dated 28.05.2008, Letter dated 21.11.08, Letter dated 16.02.2009, Elevations DHA/5505/34 Rev A dated 16.02.2009, 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 Prior to the commencement of development, details of a scheme to demonstrate that the development hereby approved will incorporate appropriate measures to contribute to a sustainable environment shall be submitted to the Local Planning Authority for approval. The scheme shall include measures to minimise waste generation, and to minimise water and energy consumption, having regard to the need for 10% of energy consumption requirements to be generated on-site from alternative energy sources and the potential for recycling water. The approved scheme shall be implemented prior to the first occupation of any of the units hereby approved.

Reason: In accordance with Core Strategy policy CP1 of the Tonbridge and Malling Local Development Framework and PPS1.

- 3 No development shall take place within the site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (including a timetable for such investigation) which has been submitted by the applicant and approved by the Local Planning Authority.

Reason: In the interests of archaeological research.

- 4 No development shall take place until details of foundation designs and any other proposals involving below ground excavation have been submitted to and approved by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To ensure that due regard is had to the preservation in situ of important archaeological remains.

- 5 No development shall take place until details and samples of materials to be used externally, including the boundary walls and railings, 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.

- 6 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.

- 7 Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order amending, revoking and re-enacting that Order), no windows or similar openings shall be constructed in the north elevations of the buildings other than as hereby approved, without the prior written consent of the Local Planning Authority.

Reason: To enable the Local Planning Authority to regulate and control any such further development in the interests of amenity and privacy of adjoining properties.

- 8 No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft 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.

9 No development shall be commenced until:

(a) a further site investigation has been undertaken using the information obtained from the desktop study to determine the nature and extent of any contamination, and

(b) the results of the investigation, together with an assessment by a competent person and details of a scheme to contain, treat or remove any contamination, as appropriate, have been submitted to and approved by the Local Planning Authority. The assessment and scheme shall have regard to the need to ensure that contaminants do not escape from the site to cause air and water pollution or pollution of adjoining land.

The scheme (method statement) submitted pursuant to (b) shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking of the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority of the presence of any such unforeseen contamination.

Prior to the first occupation of the development or any part of the development hereby permitted

(c) the approved remediation scheme shall be fully implemented insofar as it relates to that part of the development which is to be occupied, and upon completion of the remediation a report shall be submitted to the Local Planning Authority that provides verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement. Post remediation sampling and monitoring results shall be included in the report to demonstrate that the required remediation has been fully met. Future monitoring proposals and reporting shall also be detailed in the report.

(d) a Certificate shall be provided to the Local Planning Authority by a responsible person stating that remediation has been completed and the site is suitable for the permitted end use.

Thereafter, no works shall take place within the site such as to prejudice the effectiveness of the approved scheme of remediation.

Reason: In the interests of amenity and public safety.

- 10 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.

- 11 No building shall be occupied until the area shown on the submitted plan as 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.

- 12 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.

- 13 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, D and E 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 the protection of the character of the conservation area, locality and residential amenities.

- 14 Before any works commence on site, arrangements for the management of demolition and construction traffic to and from the site (including hours of operation) shall be submitted to and approved by the Local Planning Authority.



The development shall be carried out in accordance with the approved scheme unless any variation has been agreed by the Local Planning Authority in writing beforehand.

Reason: In the interests of residential amenities and highway safety.

- 15 Before work commences on site full plans and details of the proposed carport shall be submitted to and approved by the Local Planning Authority. The carport shall be implemented in accordance with the approved plans.

Reasons: In the interests of the protection of the character of the conservation area, locality and residential amenities.

### **Informatives**

- 1 The proposed development is within a road which has a formal street numbering scheme and it will be necessary for the Council to allocate postal address(es) to the new property/ies. To discuss the arrangements, you are invited to write to the Chief Solicitor, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling, Kent, ME19 4LZ or contact Trevor Bowen, Principal Legal Officer, on 01732 876039 or by e-mail to [trevor.bowen@tmbc.gov.uk](mailto:trevor.bowen@tmbc.gov.uk). To avoid difficulties for first occupiers, 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.
- 2 The Local Planning Authority supports the Kent Fire Brigade's wish to reduce the severity of property fires and the number of resulting injuries by the use of sprinkler systems in all new buildings and extensions.
- 3 Tonbridge and Malling Borough Council operate a wheeled bin, boundary of property refuse collection service. In addition the Council also operates a fortnightly recycling box/bin service. This would require an area approximately twice the size of a wheeled bin per property. On the day of collection, the wheeled bin from each property should be placed on the shared entrance or boundary of the property at the nearest point to the adopted KCC highway. The Council reserves the right to designate the type of bin/container. The design of the development must have regard to the type of bin/container needed and the collection method.
- 4 Owing to the likelihood of the existing buildings containing or being constructed of asbestos products prior to demolition an Asbestos Survey be conducted in order to manage the risk from asbestos and to comply with current health and safety legislation. Any asbestos found on site must be removed in a controlled manner by an appropriately qualified operator.

- 5 If the development hereby permitted involves the carrying out of building work or excavations along or close to a boundary with land owned by someone else, you are advised that, under the Party Wall, etc Act 1996, you may have a duty to give notice of your intentions to the adjoining owner before commencing this work.

Contact: Lucinda Green