

West Malling **568028 158074** **25 November 2009** **TM/09/02937/OA**
West Malling And
Leybourne

Proposal: Outline Application for erection of two detached houses and
garages
Location: Land Rear Of 56 Town Hill West Malling Kent
Applicant: Middlefields Limited

1. Description:

- 1.1 The proposal seeks outline planning permission for the erection of two detached dwellings to the rear of 56 and 58 Town Hill. Details of landscaping have been reserved for future consideration.
- 1.2 It is proposed to access the dwellings from an existing private access off Town Hill that runs alongside 56 Town Hill. To access one of the proposed dwellings it is proposed to create an access in the existing fence.
- 1.3 The application follows a previously refused outline application for the erection of two detached houses and garages (TM/08/02087/OA). That application was refused on the following ground:

'The height and bulk of the proposed buildings, particularly Plot 1, would be unacceptably dominating of the adjacent residential properties, 60 and 62 Town Hill, and result in a loss of outlook from these properties. The proposed development is therefore contrary to Policy QL1 of the Kent and Medway Structure Plan 2006 and policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007.'
- 1.4 This current application is intended to address the above reason for refusal.

2. Reason for reporting to Committee:

- 2.1 The controversial nature of the application.

3. The Site:

- 3.1 The site lies in the rural settlement confines of West Malling, on the western side of Town Hill. The site lies partly within the Conservation Area. To the east lies 56 and 58, both Listed properties. To the north and west are modern detached properties. To the south lies West Malling garage, and beyond that lies the railway.

4. Planning History:

TM/83/10197/FUL Refuse 25 July 1983

Four bedroom detached house with double garage with access off existing adjoining private drive.

TM/84/11357/FUL Refuse

21 March 1984

Change of use of land forming part of garden to use form the parking of cars.

TM/08/02087/OA Refuse

16 February 2009

Outline Application for residential development - erection of two detached dwellings

5. Consultees:

5.1 PC: No objections.

5.2 KCC (Highways): No objections.

5.3 KCC (Archaeology): The application site lies within the historic town of West Malling. This settlement is considered to have early Medieval origins as a community attached to St Marys Abbey before becoming a thriving and important medieval market town. There are several medieval buildings surviving within West Malling today and a large number of post medieval buildings reflecting the extent of the market town. No.s 56 and 58 Town Hall are both listed buildings (Grade II). No 58 is considered to be a 16th century timber framed house and no 56 is of later construction but is marked on the 1st Edition OS map as a smithy. From the 2nd Edition OS map both house plots seem to be surprisingly busy with rear buildings. These may have been part of a local industry, perhaps partly metal working attached to the smithy. On the application site itself there are no indications of buildings on the 1st Edition OS map but there are 3 small buildings marked on the 2nd Edition. These buildings may be external toilets, garden sheds or some kind of outbuildings serving 56 and 58 Town Hill during the late 19th and early 20th century. Remains of these outbuildings may be directly impacted upon by the development and the proposed access road may have an impact on surviving remains of buildings to the rear of no 56, the smithy.

5.4 The HER records the discovery of some Roman pottery in the garden of No 58 Town Hall (HER No. TQ 65 NE 100).

5.5 In addition, the garden of No 58 Town Hall is a locally listed garden of historic interest but this is on the grounds of it being a modern garden of specialist interest. It is graded 3/4 in the Kent Gardens Compendium (KCC/KGT 1995).

5.6 Remains associated with the Roman pottery or with the post medieval structures would be of heritage interest and some limited heritage work would be appropriate. On the basis of present information summarised above, I suggest that it would be

appropriate for an archaeologist to maintain a watching brief during any groundworks.

5.7 DHH: I agree with the applicant's acoustic consultant's conclusions in his report ref 080801/1 in that no specific noise attenuation measures are required in relation to this application.

5.8 The site is adjacent to West Malling garage. In order to determine this application, I require a desktop study and walkover survey report for the site following current guidance and practice.

5.9 Private Reps + Art 8 site notice (19/11R/1X/0S) Nineteen letters received, objecting on the following grounds:

- Strongly object if the applicant intends to plumb the existing drains of the houses opposite;
- These are private drains, maintained by 8 properties which have had to be repaired at these residents' expense in the past. The provision of drainage would cause severe disruption to the surrounding locality;
- The location is incorrectly described as being behind 56 and 58 Town Hill;
- The building in the rear garden of 58 Town Hill is not shown. It has planning permission but is not complete. It is attached to the Listed wall and thus listed. It requires Listed Building consent for demolition. It is shown on early OS maps, etc;
- The land has no rights to light or otherwise which would restrict or interfere with the use of the curtilage of 58 Town Hill for building or other purposes. This could have very important implications for any owners or sellers if the owner of 58 Town Hill or the industrial site undertakes works;
- Details of land levels have not been provided;
- This development is visible from the Cricket ground, Ryarsh Lane, Town Hill, High Street;
- This development is not part of the 'modern' development by Hillreed, it is on land of 56 and 58 Town Hill, being linked to 18th century buildings;
- All other development on the site has been single storey to preserve the vital view of the Downs, which is recognised as being important within the West Malling Conservation guide;
- The bulk of the building is too great. It is too high and the design relates to the 1980's. It should reflect the architecture of 56 and 58 Town Hill;

- The proposal will compromise security. The removal of the dense screening hedge to the south will enable entry to the rear of 56 and 58 Town Hill, which are now well secured from the open industrial site;
- The boundary hedge of no 58 is not shown. There should be no intention to interfere with it;
- A full tree survey should be required to be submitted;
- Insensitive lighting could damage the amenity of the surrounding area;
- The windows of the proposed dwellings should not overlook the gardens of 56 and 58 Town Hill because these historic properties have no front gardens and therefore rear privacy is vital to life quality;
- Plot 1 is very close to the listed brick wall which should not be removed or disturbed;
- The proposal would seriously affect traffic movement to and from an already busy Town Hill; It will increase road danger and add traffic congestion;
- It would appear that the formation of the access to the site could be assessed as creating a new right of way contrary to the assertion of the applicant (on plan no 294/01);
- The site slopes down towards 60 Town Hill. No 60 suffers some 'ponding' to the front of the property. It is probable, if not certain, that the concentrated surface water discharge through soakaways from the proposed development will exacerbate the problem;
- The proposal will mean that over 5 dwellings would be accessed from the access road, contrary to the advice of Kent Design;
- The proposal is not in-keeping with the design of the properties in Town Hill Close;
- The development of houses in the Conservation Area defeats the purposes of the protection provided of a Conservation Area;
- The provision of a 3 bedroom house would be less in-keeping with the surrounding than the larger one;
- The site is Green Belt and we were of the understanding that this status would not be allowed to change. To allow development would mean that further development would follow;

- The Design and Access Statement states that the proposed development is in line with the current policies in respect to spacing and property design. This is not correct. The other houses on the shared access are on sites that are larger than the combined total size for these 2 properties;
- The proposed dwellings, due to the inclination of the land, will still overlook 60, 62 and 54 Town Hill;
- The proposed access onto the existing access driveway will be a blind access between an 8ft wall and a 6ft fence;
- The applicants do not have a right of access over the access road;
- The arboricultural report details five trees that will have activities arising from the proposal. Even if the procedures to protect these trees during development are adhered to there could still be adverse effects on these trees;
- The arboricultural report states that the author has not checked whether any of the trees on the site are covered by TPO's or whether the site is in a Conservation Area. Part of the site lies within a Conservation Area. Trees in the Conservation Area have special status when the bole diameter is a specified size;
- The approx 6m high holly with a bole diameter of approximately 15cm above ground is not mentioned and is presumable to be felled along with birch T1. This 60 year old tree provides important industrial screening and wildlife support and may affect risks to the adjacent outbuilding at 58 Town Hill;
- The planning approval for the adjacent site is not shown on the applicant's drawings (TM/96/01191/FL), Current correspondence with the LPA states that the owner has permitted development rights over this area;
- Deeds relating to the application site indicate that the site has no rights to 'air or other' which would restrict or interfere the use of the adjacent property (58 Town Hill) for building or other purposes;
- There is new legislation on the setting of listed buildings in relation to the probable dominating effect of the proposed development on the adjacent Listed Building and garden;
- The levels drawings (cross section plans) show an upbuild on the sloping land not an excavation. This makes the slab levels of the standard housing units even more dominating;
- No mention that the site is the historic garden of a listed house;

- The application has been submitted as an outline application. There will be very little control on what is actually built if consent is given;
- The height and size of the buildings within such a small area cannot be in-keeping with the properties within the area;
- The landscaping plan shows that it is proposed to plant 4 trees. This will not compensate for the trees and bushes that will be ripped out and destroyed during construction;
- It does not appear that the applicant knows what they want and are wasting everyone's time;
- The proposed access is below the crest of the hill and sited in a spot of dead ground as viewed by seated drivers driving down the hill. The visibility distance is barely within the stopping distance of a car travelling at legal speed on wet surface;
- The gravel driveway passes beneath the canopy of three lime trees and a horse chestnut. These trees have TPOs, and are of major importance and beauty in the High Street townscape.

6. Determining Issues:

- 6.1 Policy CP12 of the Tonbridge and Malling Borough Core Strategy 2007 (TMBCS) states that housing development within the confines of West Malling will be permitted.
- 6.2 Policy CP24 of the TMBCS requires all development to be well designed and of a high quality in terms of detailing and use of appropriate materials, and to respect the site and its surroundings through its scale, density, layout, siting, character and appearance.
- 6.3 Policy SQ1 of the Tonbridge and Malling MDE DPP 2010 requires that all new development should protect, conserve and enhance the character and local distinctiveness of the area including its historical and architectural interest and the prevailing level of tranquillity.
- 6.4 One of the proposed dwellings falls within the Conservation Area, and one outside.
- 6.5 I am of the opinion that, as with the previous application, the layout of a proposal on this site for two dwellings would be acceptable. The form of a development of two dwellings could fit in with the existing form of development in the locality, in terms of pattern of development and spacing between dwellings. The density of the proposal is 13 dph, comparable with the surrounding locality. Therefore, I am satisfied that the principle of the development is acceptable in this respect.

- 6.6 PPS5 seeks to preserve the architectural and historic integrity and the character of a setting of a Listed Building. Development which will adversely affect Listed Buildings will not be permitted. It states that Local Planning Authorities should take into account the desirability of new development making a positive contribution to the character and local distinctiveness of the historic environment.
- 6.7 It is proposed to access the site from the existing private access road, which runs adjacent to 56 Town Hill. A Listed wall runs alongside this access road. The submitted layout plans do not indicate that any of this wall would need to be removed to obtain access to the site. There is a Listed wall bounding 56 Town Hill, extending along the access. The applicant is proposing to access the site from this access road beyond the wall and will therefore remove some of the existing fence.
- 6.8 The site slopes down from towards the west of the site. The adjacent Listed Buildings (56 and 58 Town Hill) lie to the east of the site. The site is situated 46m from the rear of no 56 Town Hill. Therefore, I do not consider that the proposal would result in a significant impact to the amenity or setting of the Listed Buildings.
- 6.9 Given the relationship of the site to the surrounding dwellings I am of the opinion that the design of the proposed dwellings would not be significantly detrimental to the surrounding locality.
- 6.10 The design of the dwelling proposed for the north-west of the site has been altered following the refusal of the previous application. The height of this dwelling has been reduced by 1m from the previous application to 8.144m and has been redesigned to have a catslide roof on the rear elevation. There are no windows proposed for the first floor of the rear elevation except for a velux window that would serve a bathroom. This change in the height and design of the proposed dwelling that would lie adjacent to 60 and 62 Town Hill, has adequately addressed the previous reason for refusal, and the new design would not significantly dominate these properties or result in a significant loss of outlook.
- 6.11 I note the objections relating to the impact of the design of the properties on the existing dwellings. I consider that the design of the dwellings is appropriate to the surrounding locality. Whilst Listed Buildings (56 and 58 Town Hill) lie adjacent to the site, they are some distance away, and therefore the design would not be detrimental to these Listed Buildings anymore than the previous scheme which was not refused on the grounds of design. The design of the dwelling closest to the garden of 56 and 58 Town Hill has remained the same, albeit with the removal of the garage to the east of the dwelling. The minor alterations that have occurred to this dwelling would not alter my assessment of the relationship of the design of the dwelling to 56 and 58 Town Hill. PPS5 – Planning for the Historic Environment states that what is important is not that new buildings should directly imitate earlier styles, but that they should be designed with respect for their context, as part of a larger whole which has a well-established character and

appearance of its own. I believe this to be the case with this current proposal. The building in the rear garden of 58 Town Hill is not shown on any of the submitted plans. This is a partially built outbuilding, over 1m from the common boundary. I consider the relationship between the two new buildings and this building is entirely acceptable.

- 6.12 Whilst the development of dwellings on the site would have an impact on views of the countryside from 56 and 58 Town Hill, I consider this also to be acceptable.
- 6.13 The site will be accessed by an existing private road, which currently serves 5 dwellings. Kent Design recommends a maximum of 5 dwellings being served off a private drive. However, this is a guide and is not prescriptive. It does not preclude more than 5 dwellings being served from a private drive. I am satisfied, as is KHS, that the current vehicle access onto Town Hill can accommodate the traffic generated by the 2 additional dwellings. Notice has been served on the owners of this access so as to meet necessary legal provisions.
- 6.14 I note the concerns raised with respect to the additional road traffic noise that two additional dwellings could create. However, I am of the opinion that two additional dwellings will not create a significant increase in road traffic noise. Issues relating to development noise from the proposal are not material planning considerations.
- 6.15 There is some possibility that there could be archaeological remains on the site, and therefore KCC (Archaeology) has recommended a condition be attached to any planning permission requiring a watching brief to be maintained during groundworks.
- 6.16 I note the concerns raised in relation to the impact that an additional two dwellings could have upon the views from surrounding properties. As the Committee is aware individual private views cannot be protected through the planning process.
- 6.17 I also note the concerns relating to a right to light and rights to air, however in planning terms, these issues are civil issues. I am also satisfied that there are no impacts in terms of light to neighbouring properties/ gardens that give rise to planning concerns.
- 6.18 Issues relating to the impact of the proposal on existing service infrastructure is not a determining factor in this case.
- 6.19 I note the concerns that the proposal would result in a loss of privacy. The drawings submitted indicate that the proposal complies with the provisions of Saved Policy P4/12 and Policy Annex PA4/12 of the TMBLP
- 6.20 The applicant has submitted a plan showing the existing trees on the site. I am satisfied that the proposal will not be detrimental to the health of the prominent species, although protective measures may be required especially during construction.

- 6.21 Cross-section plans of the proposed dwellings in relation to the existing adjacent dwellings have been submitted. None of the trees within the site are protected by a TPO. A condition should be used to control slab levels.
- 6.22 I note the objection received regarding loss of the dense hedge to the south and the impact this may have upon the security of 56 and 58 Town Hill. The owner of the hedgerow could remove the hedge at any time, regardless of any grant of planning permission. It may be helpful to confirm to the applicant that the proposal scheme does not require the removal of the hedge which appears to be owned by a third party.
- 6.23 I note the concerns raised relating to lighting and the impact that this would have upon the surrounding locality. I am of the opinion that lighting that would be associated with the proposed dwellings would not have a significantly detrimental impact on the amenity of the surrounding locality given this residential setting.
- 6.24 I note the concerns relating to surface water discharge. The site does not lie within a flood plain. Issues relating to surface water discharge will be dealt with under Building Regulations. I note the concerns relating to the lack of additional planting proposed to compensate for the trees and bushes to be removed. Landscaping is reserved for future consideration, therefore additional planting can be negotiated at a later stage.

7. Recommendation:

- 7.1 **Grant Planning Permission.** This was approved in accordance with the following submitted details: Letter dated 19.11.2009, Validation Checklist dated 19.11.2009, Design and Access Statement dated 19.11.2009, Noise Assessment dated 19.11.2009, Site Plan dated 19.11.2009, Drawing 294/WO.03 A dated 19.11.2009, Drawing 294/KI.02 dated 19.11.2009, Drawing 999/WEST MALLING tree and level survey dated 19.11.2009, Letter dated 25.11.2009, Drawing 294/GA.04 dated 25.11.2009, Email dated 06.04.2010, Schedule 294/01 B dated 06.04.2010, Section 294/SS.05 A dated 06.04.2010, subject to:

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. 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 the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

4. 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 Classes A-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 amenity.

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 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.

6. 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.

7. The details submitted in pursuance of condition 1 shall be accompanied by a scheme of landscaping and boundary treatment which shall include a tree survey specifying the position, height, spread and species of all trees on the site, provision for the retention and protection of existing trees and shrubs and a date for completion of any new planting and boundary treatment. The scheme as approved by the Authority shall be implemented by the approved date or such other date as may be agreed in writing by the Authority. Any trees or plants which within 10 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Authority gives written consent to any variation.

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.

8 No development shall be commenced until:

(a) a site investigation has been undertaken 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 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

(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. (N015)

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@tmbs.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 is ready for occupation.

- 2 Consent should be obtained from the owner of the hedgerow on the south-east boundary should you propose to remove this.

Contact: Glenda Egerton