



Appeal Decision

Site visit made on 17 May 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 MAY 2021

Appeal Ref: APP/H2265/W/20/3264618

1-4 River Walk, Tonbridge TN9 1DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by OSP Architecture (Agent) against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/19/01108/FL, dated 8 May 2019, was refused by notice dated 30 October 2020.
 - The development proposed is for the construction of a building comprising of 36 apartments, including access and ground-floor and under-croft parking, following the demolition of the existing built form on site.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a building comprising of 36 apartments, including access and ground-floor and under-croft parking, following the demolition of the existing built form on site, at 1-4 River Walk, Tonbridge TN9 1DT, in accordance with the terms of the application, Ref TM/19/01108/FL, dated 8 May 2019, and the plans submitted with it, subject to the conditions set out in Annex A.

Procedural Matters

2. The proposal was scheduled to be determined by the Council in February 2020. However, determination of the application was deferred by the Council to allow for further consideration of, amongst other things, a unilateral undertaking (UU) securing planning obligations; the provision of a commuted sum related to affordable housing provision, and contributions towards open space, education and libraries. Notwithstanding concerns raised by interested parties in respect of the above, these matters have now been concluded and agreed by the main parties and signed copies of the obligations have been submitted as part of this Appeal. Indeed, the Council was satisfied that the sums and timing of the payments were acceptable, and I see no reason to disagree. These obligations are necessary to make the development acceptable in planning terms and meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Nonetheless, the proposal was refused by the Council in a Decision Notice dated 30 October 2020 for the main issue set out below. I have proceeded accordingly.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site is located in the Tonbridge Conservation Area (CA) at the corner of New Wharf Road and River Walk as it follows the River Medway opposite Tonbridge Castle which is a Grade I listed building and Scheduled Ancient Monument.
5. The surrounding area is typified by a range of architectural styles including the medieval-style, timber and render town-centre that includes feature corner-bay elevations, the 'Tudorbethan' interwar dwelling that is seen on the appeal site, as well as more contemporary apartment blocks including that seen at Waterside Lodge.
6. The host dwelling at 1-4 River Walk which does not meet any specific listing including that related to Historic England criteria appears to be empty, and is a former residential dwelling that was used as office space for some years. To the rear of the generous appeal site there is a car-park associated with a food-retail store that is accessed via the streets to the rear of Tonbridge High Street. The dwelling faces across tree-lined public realm towards the River Medway and Tonbridge Castle.
7. The proposal is to demolish the appeal dwelling and to construct an L-shaped brick and rag-stone 3 and a half storey x 36 unit residential building on the appeal site that would have a bronze/copper coloured metal roof and glazed and/or recessed balconies. There would be vehicular access to under-croft parking, as well as ground-floor access to a refuse store and cycle storage from New Wharf Road. The main entrance and pedestrian access to the car park for the proposed development would be found on River Walk which would include feature corner bays to each side of the front elevation. The 40 degree pitched roof corner bays would include stone coping, moulded window surrounds, copper-coloured window frames and spandrels. Copper-coloured decorative panels would also be installed to ventilate and obscure the car parking area at ground level, and the elevations to the front and side would be bounded by a 'white-cross' timber fence. Two hawthorn trees on the site would be removed to allow for new soft-landscaping, and there would also be hard-landscaping and benches to the front. There would be a landscaped public garden area and seating to the rear.
8. My attention has been drawn to two Appeal decisions¹ in support of the Council's case. These are noted. However, I have limited details of those schemes before me. Therefore, as is correct, I have considered the proposal in this case on its own planning merits. Accordingly, while the appeal is located in the CA the Council have concluded that the existing dwelling has a neutral contribution to the area. As such, I see no reason from the evidence before me why the building cannot be demolished on this former semi-industrial wharf area that has undergone many changes over an extended period of time, as set out in the 'AH Heritage' planning heritage statement. Moreover, while the proposal would be directly opposite Tonbridge Castle, I noticed at my site visit that the proposal would not obstruct the views of the monument from New Wharf Road or from 'The Big Bridge' when travelling or walking along the nearby High Street.

¹ APP/H2265/W/19/3234098 and APP/H2265/W/20/3259964

9. Indeed, whether there would be future redevelopment to the rear of the appeal site which would have to be assessed on its own planning merits or not, and notwithstanding that the proposal would be taller than the existing dwelling, in my opinion the building would not overwhelm or detract from the historic beauty of the castle that is appreciated by local people and tourists alike. To the contrary, the carefully chosen materials, detailing and articulated roof-line design that could be secured by condition would complement the buff sandstone brickwork and outline of the historic building opposite.
10. Furthermore, I noted that this section of River Walk includes a number of buildings including a high-street bank, Gilbert House and a public-house and garden which would have a similar relationship to the castle as the proposed dwellings. Indeed, the proposal would be set further back from the river bank across the relatively wide public realm at this point on River Walk, that would include seating, trees and other planting as it runs towards the more verdant section of the footway on either side of the river adjacent to Racecourse Park.
11. I note the Council's concerns regarding the visual contribution to the street-scene at ground level in respect of the development on New Wharf Road, which in part is driven by necessary elements to successfully mitigate flood risk in a similar way to that seen at Waterside Lodge, and the proposed access to the under-croft parking. However, the existing site offers a relatively weak and unattractive setting to the listed building in comparison to the enlivened elevations of the building proposed, as shown in the submitted 'Design and Access Statement – Addendum' (May 2020). Indeed, the building would sit comfortably on the triangular town-centre site space available, and include high quality, traditional-type materials including; copper decorative panels, white-cross fencing, red brick and rag-stones, as well as tall feature corner bays and pleasant glazed and/or recessed balconies, all of which could be secured by condition.
12. Moreover, the bespoke L-shape design of the proposal that wraps around River Walk towards New Wharf Road with a turning corner bay similar in design to those seen on the nearby High Street would in my view provide a smooth transition along this section of the public walkway to the built environment beyond. I conclude therefore, that the proposal would make a positive contribution to the street-scene in this specific location, and hence accord with the character and appearance of the area.
13. Accordingly, the proposal meets the requirements of Policy CP24 of the Tonbridge and Malling Borough Core Strategy 2007, and Policy TCA1 of the Tonbridge Central Area Action Plan 2008, which say amongst other things that all development must be well designed and of a high quality in terms of detailing and use of materials.
14. For similar reasons, the proposal meets the aims of Paragraphs 117, 127 (c), and 130 of the *National Planning Policy Framework* (the Framework) which include the requirement that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Other matters

15. I acknowledge that there were a number of representations from interested parties in respect of the proposal, which in addition to the main issue and other matters, included concerns related to flooding, drainage, traffic, parking, alternative uses, overshadowing, noise and disturbance from neighbouring businesses, and the impact of demolition and the construction period. However, given my findings above including consideration of the submitted technical evidence, and the suggested conditions provided by the Council, I have found no justification to dismiss the Appeal or the benefits associated with the provision of 36 new dwellings on previously developed land.

Conditions

16. I have considered the Council's suggested conditions against Paragraph 55 of the Framework and the national '*Planning Practice Guidance*' (PPG), and imposed the following conditions; for certainty a standard time limit condition and a condition requiring that the development is carried out in accordance with the approved plans.
17. There is also a condition related to a construction method statement including demolition. This is imposed to ensure the amenity of the area and highway safety during construction. I have imposed conditions for materials and the sections of all proposed windows and balconies to secure the appearance and quality of the development.
18. To protect biodiversity and amenity generally an external lighting condition has been imposed. A car parking condition has been included in the interests of highway safety. To encourage the use of electric vehicles there is a car-charging installation condition. Finished floor levels and site levels will be surveyed as a matter of condition to ensure the character and appearance of the area is maintained. There is a condition imposed in regard of access and its retention in the interests of highway safety. To promote sustainable transport a cycle storage condition is necessary.
19. A refuse store condition has been added to uphold the living conditions of future and neighbouring occupiers. Soft and hard landscaping conditions have been imposed for both existing and new landscaping to ensure the character and appearance of the area is maintained. An ecology condition is imposed in the interests of biodiversity. Conditions are included in the interests of surface water drainage, flood and pollution prevention on the site. There are conditions for contamination, remediation and piling to prevent pollution and risk to human health.
20. I have not imposed the Council's suggested condition related to the proposed Travel Plan. Paragraph 55 of the Framework and the PPG state that conditions should not be imposed if it fails to meet one of the 'six tests' even if it is suggested by an Applicant, members of a Planning committee or third party. In this case I have no convincing evidence before me in order to conclude that the plan would be enforceable or monitored. Therefore, I have not imposed the suggested condition. As such, it is for the main parties to decide whether implementation of the Travel Plan would be desirable in the promotion of the scheme or not.

Planning Balance and Conclusions

21. The Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, Paragraph 11 (d) of the Framework is engaged and planning permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits. Indeed, bearing in mind Paragraph 59 of the Framework which refers to significantly boosting the supply of housing, and given my findings above, including the significant social and economic benefits associated with the construction and provision of 36 new homes to the Council's housing supply, I conclude that the Appeal should succeed, and therefore planning permission is granted subject to the conditions set out in Annex A.

J E JOLLY

INSPECTOR

Richborough Estates

Annex A – Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Landscape Proposal IJ166-01 A, dated 21 October 2019
 - Proposed Elevations 18322- P105C, dated October 2019
 - Proposed Site Layout Ground Floor Level 18322-P101J, dated 14 March 2019
 - Proposed Site Layout Roof Level 18322-P102E, dated 14 March 2019
 - Coloured Apartment Elevations 18322-C104D, dated April 2020
 - Proposed Ground Floor Plan 18322-P110B, dated 14 March 2019
 - Proposed First Floor Plan 18322-P111B, dated 14 May 2019
 - Proposed Second Floor Plan 18322- P112C, dated 14 March 2019
 - Proposed Third Floor Plans 18322-P113C, dated 14 March 2019
 - Corner Bay Study 18322-C106, dated May 2020
 - Existing Site Survey 18322 - S102, dated 14 March 2019
 - Site Location Plan 18322 - S101, dated December 2018
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development of a building/s shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the Local Planning Authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved samples, which shall not be removed from the site until completion of the development.
- 5) No above ground development shall take place until full detailed plans and sections of all proposed windows and balconies at a scale of 1:20 together with details of proposed finishes have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in strict accordance with the approved details.
- 6) No external lighting shall be installed in connection with the building until such details have been submitted to and approved by the Local Planning Authority, and the work shall be carried out in strict accordance with those details.
- 7) No dwellings shall be occupied until space has been laid out within the site in accordance with drawing No Proposed Ground Floor Plan 18322-P110B, dated 14 March 2019 for 36 cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles.
- 8) Before the development hereby approved is occupied, details of the installation of car charging points shall be submitted to and approved in writing by the Local Planning Authority. The charging points shall be installed in accordance with the approved details and maintained and retained at all times thereafter.
- 9) No development shall take place until the following information shall have been submitted to and approved in writing by the local planning authority:
 - i) a full site survey showing: the datum used to calibrate the site levels; levels along all site boundaries; levels across the site at regular intervals and floor levels of adjoining buildings;
 - ii) full details of the proposed finished floor levels of all buildings and hard landscaped surfaces.The development shall be carried out in accordance with the approved details.
- 10) The building shall not be occupied until a means of access for vehicles/pedestrians/cyclists shall have been constructed in accordance with the approved plans. The access shall be retained thereafter.
- 11) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing Nos Proposed Site Layout Ground Floor Level 18322 P101J and Proposed Ground Floor Plan 18322-P110B, dated 14 March 2019 for 36 bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.

- 12) The use of the development shall not commence until the area shown on drawing Nos Proposed Site Layout Ground Floor Level 18322 P101J and Proposed Ground Floor Plan 18322-P110B, dated 14 March to be reserved for the provision of refuse facilities has been provided on site in accordance with the approved plans. Thereafter, the installed facilities shall be retained at all times for the life of the development hereby permitted.
- 13) The existing trees and shrubs shown on the approved drawing: No Landscape Proposal IJ166-001-01A other than any specifically shown to be removed, shall not be lopped, topped, felled, uprooted or wilfully destroyed without the prior written consent of the Local Planning Authority, and any planting removed with or without such consent shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of five years.
- 14) The development 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.
- 15) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered
 - ii) boundary treatments
 - iii) hard surfacing materials
- 16) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 17) The development shall be undertaken in strict accordance with the recommendations set out in the Preliminary Ecological Appraisal prepared by Chris Blanford Associates dated April 2019.

- 18) The development shall be undertaken in strict accordance with the recommendations set out in the Flood Risk Assessment and Drainage Strategy prepared by Herrington Consulting Limited dated May 2019.
- 19) No above ground development shall take place until a detailed sustainable surface water drainage strategy has been submitted to and approved by the Local Planning Authority. The detailed drainage scheme shall be based upon the principles contained within the Flood Risk Assessment by Herrington Consulting Limited (May 2019, Issue 2) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance) that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker. The drainage scheme shall be implemented in accordance with the approved details.
- 20) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable modelled operation of the drainage system such that flood risk is appropriately managed. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 21) The development shall not be first occupied or first brought into use until details of a Flood Management and Flood Evacuation Plan including means of safe access and egress to/from the site shall be submitted to and approved by the Local Planning Authority.
- 22) The use of the building shall not commence until works for the disposal of foul and surface water drainage have been provided on the site to serve the development, in accordance with details to be submitted to and approved by the Local Planning Authority.

- 23) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 24) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied.
- 25) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater.

*****End of Conditions*****