



Appeal Decision

Site visit made on 22 September 2022

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/H2265/W/21/3284350

Land West of Station Road North, West Malling ME19 6HN

- 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 Perseus Land & Developments C/o BGF4 (West Malling) LLP against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/00598/FL, dated 3 March 2021, was refused by notice dated 28 May 2021.
 - The development proposed is the erection of a care home (within use Class C2) including parking, access, landscaping and other associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a care home (within use Class C2) including parking, access, landscaping and other associated works at Land West of Station Road North, West Malling, ME19 6HN in accordance with the terms of the application, Ref TM/21/00598/FL, dated 3 March 2021, subject to the conditions in the schedule to this decision.

Main Issues

2. The main issues are:
 - a. The effect of the development on the significance of heritage assets, including St Mary's Abbey and the West Malling Conservation Area.
 - b. The effect of the development on the character and appearance of the area.
 - c. If there would be harm in relation to the significance of the conservation area or any listed buildings, whether any public benefits of the proposal would outweigh that harm.

Reasons

Heritage Assets

3. The site lies outside the historic town of West Malling and in the general vicinity of multiple designated and non-designated heritage assets, including the designated West Malling Conservation Area (WMCA) part of the boundary of which runs along Lucks Hill on the opposite side of the road to the site. WMCA includes a core area of the historic town and extends significantly beyond the more built-up area into some of the town's rural hinterland. The significance of the WMCA is therefore expressed not only through the evolution of the town

but also through the linkages and relationship with the adjacent countryside. The area of the WMCA opposite the site contributes strongly to this latter element of significance, with a generally rural character and an attractive appearance comprising of pastures and trees interspersed with occasional buildings including a primary school and a catholic church.

4. St Mary's Abbey, a Scheduled Monument, includes eleven statutorily listed buildings including five listed at Grade I and two at Grade II*. Drawing from the various list descriptions, the Abbey, currently occupied by a community of Anglican Benedictine nuns, in part dates to c1090 when Archbishop Gundulf of Rochester built an Abbey Church and installed Benedictine nuns in place of an order of monks that had been installed there since AD944. The complex evolved over time and now includes significant elements added over the centuries, including cloisters, the gatehouse and chapel, the convent building and chapterhouse and library. 20th Century additions include the Grade II* listed convent church by Maguire and Murray, built in 1964-6. There is no dispute that St Mary's Abbey is of exceptional interest and national significance.
5. The Abbey, which is essentially set within a substantial boundary wall, forms a distinct character area of the town yet it is established, including through consideration of the matter by my colleagues in the appeals at Lavenders Road and Ashton Way, that the Abbey has a longstanding relationship with the town and the nearby countryside which has been an integral factor in the evolution of the overriding Town-Abbey-Countryside pattern of development, and forms a strong ongoing element of the historic character of the immediate and wider area and of the setting of the Abbey.
6. The 70-bed care home would be located on a triangular site, bordered by Lucks Hill, Station Road North, and the embankment of the London-Ashford railway. Currently a grassed field, surrounded by a strip of trees and vegetation on each side, the site is in keeping with its countryside location. In its current form, it provides a green backdrop to the adjacent part of the WMCA and a modest buffer area between the WMCA and West Malling railway station and associated infrastructure. This makes a modest contribution to the character and appearance of the setting of the WMCA and, in turn, contributes to a very limited degree to the significance of the conservation area itself. However, the site has a somewhat separate, enclosed character which differs notably from the more open and park-like appearance of the fields within the WMCA in the vicinity of the school.
7. The care home would introduce a substantial building and associated access and parking areas which, despite the proposed significant retention of boundary trees and the provision of additional landscaping, would be visible from the roads adjacent and from within the nearby part of the WMCA. The presence of the large building would undermine the countryside character of this part of the setting of the WMCA, but the harmful effect of this on the significance of the WMCA would be very limited given that the rural character and historic association between this character area of the WMCA and the Abbey and town would be essentially unaltered. Furthermore, there is extant permission to redevelop the appeal site as a 204-space station car park, which itself would result in a more urbanised character here, adjacent to the WMCA.

8. The previous appeal decisions have identified that the Abbey has a historic association with the rural setting, and that this setting contributes to the way in which the heritage asset is experienced and appreciated. However, it is also recognised that the development of the railway and, much later, improvements to the A228 have introduced urbanising features that have truncated the Abbey's association with the wider countryside setting to some degree. The appeal site, being set behind the embankment on the far side of the railway, is particularly in this category and the Abbey is now experienced quite separately from it, albeit the site is passed-by on one of the key routes towards the Abbey and into West Malling. While the appellant's evidence suggests no known association or functional relationship between the site and the Abbey, it is quite possible the site would have been part of the agricultural hinterland, particularly at a time before the advent of the intervening railway line.
9. Nevertheless, there is no discernible inter-visibility between the site and the Abbey and the contribution made by the site to the experience of approaching the Abbey is minimal by virtue of the degree of separation, the lack of inter-visibility, and the distinct, enclosed character of the site. Furthermore, there is no known current association or functional relationship between the site and the Abbey, although there may have been such a relationship historically. As such, the contribution of the site to the countryside setting of the Abbey, and the way in which the Abbey and the approach is experienced, is very limited.
10. The introduction of the substantial built form of the care home would have an adverse effect on the existing countryside character of the site and, therefore, the wider countryside setting of the Abbey within the arc of the A228 to an extent. However, the character of the site is notably different from that considered in the Ashton Way and Lavenders Road appeals, which are more open and more closely related to the Abbey, making a greater contribution to its setting. Therefore, for the reasons given, the contribution of the site to this setting is very limited and so this would translate into only a very modest adverse effect on the heritage significance of the Abbey.
11. The nearby West Malling Station, which lies adjacent to the site and outside the defined settlement confines, is Grade II listed. The significance of the listed building predominantly lies in its example of a generally well-preserved railway station dating from around 1874, and the contribution of the development of the line to the wider development of the railways at that time. While the site lies close to the station, its contribution to the setting is very limited due to the embankment, relative ground levels, intervening trees, and intervening station infrastructure including car parking. Moreover, the key setting of the station is relatively immediate and relates in the main to the station forecourt and associated buildings and facilities, rather than nearby countryside. Again, the care home would be a substantial built form within the wider environs of the listed building but, given that the rural setting provided by the site makes only a very limited contribution to the station's significance, the harm arising to that significance would be extremely limited.
12. I conclude that the proposed development would harm the setting and, in association, the significance of the WMCA, St Mary's Abbey, and West Malling Station. As such, the proposal would conflict with Policy SQ1 of the Council's Managing Development and the Environment Development Plan Document 2010, which among other things expects new development to protect, conserve or enhance local character and distinctiveness including historical and

architectural interest. This policy pre-dates the Framework, but for the purposes of this appeal its aims are generally consistent with the aims therein regarding conserving and enhancing the historic environment.

13. The statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) is a matter of considerable importance and weight, and accordingly I have had special regard to the desirability of preserving the settings of the listed buildings. Paragraph 199 of the National Planning Policy Framework 2021 sets out that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation and the more important the asset the greater the weight should be. The Framework also requires that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. For the reasons given, I find the harm arising would be very limited overall and would constitute "less than substantial harm" in the context of Paragraph 202 of the Framework but, nevertheless, a matter of considerable importance and weight. In such circumstances, it is necessary to weigh the harm to heritage assets against the public benefits of the proposal, which I return to below.

Character and Appearance

14. The introduction of the substantial proposed care home would considerably change the rural nature of the site. While the building has been designed with features such as projecting gables and varied roof forms to break up the overall bulkiness; layout and siting to address the form of the site and surroundings; and the palette of materials would reflect those typical of the local area, the proposal would introduce built form in a scale and manner that would be harmful to the existing countryside character and appearance of the site and surroundings. The presence of other built form in the vicinity - particularly the adjacent station and railway embankment - and the enclosed position and nature of the site relative to the wider countryside on this side of West Malling, largely due to the site's position tucked between roads, embankment, and surrounded by trees, together serve to moderate the level of harm to the wider character and appearance of the countryside in the specific circumstances of this case.
15. The harm to countryside appearance would also be limited to a degree by the proposed retention of boundary trees and vegetation. Nevertheless, the development would be visible from surrounding areas, particularly Lucks Hill and particularly during winter months, and so would alter a relatively small part of the approach to the town. Relative to the extant car park permission, for which I am advised that conditions have been discharged and some initial works have been carried out, the proposed care home would be somewhat more visually intrusive in the countryside and therefore more harmful to character and appearance. This limits the weight to the extant car park permission as a fallback in relation to this issue.
16. I conclude that, in the specific circumstances of this case, the proposed development would result in moderate harm the character and appearance of the area. It would therefore conflict with Policy CP24 of the Tonbridge and Malling Core Strategy 2007, which among other things expects the scale, character, and appearance of development to respect the site and its surroundings, and the character of the countryside. This policy pre-dates the

Framework, but for the purposes of this appeal it is generally consistent with the design aims therein.

Public Benefits

17. There is general agreement that older persons' care accommodation is needed in the area and that the need is escalating in light of the sustained ageing of the population overall and increasingly complex health and care requirements as people live longer. It is clear the 70-bed development, which would provide a range of care including in dementia services for which there is a particular identified demand in Kent, would make a meaningful contribution to addressing the existing undersupply of care accommodation in the borough. This is a substantial public benefit of the proposal. Significant public benefits would also arise from the level of job creation, and the potential to free-up underoccupied homes when residents move to the new care accommodation. Other suggested benefits, such as the distance to access facilities in the town, accessibility by various modes of transport, and energy-efficient design features, do not attract significant weight in this case as they fall within the general expectations of sustainable planning and design.
18. In accordance with paragraphs 199 and 202 of the Framework, considered together, I find that the substantial public benefits arising principally from the contribution to elderly placement and care needs would, in this case, outweigh the great weight to be given to the limited degree of less than substantial harm I have identified.

Other Matters and Planning Balance

19. Concerns have been raised that vehicle movements associated with the operation and occupation of the care home would adversely affect highway safety on nearby roads, including in the vicinity of the primary school at drop-off and pick-up times. No issues with personal injury collisions have been identified, and there is no significant evidence before me to indicate that there would be significant adverse effects on the operation of the local highway network. While there is a degree of uncertainty whether additional car parking to serve the train station is required post-pandemic, the proposed care home would produce fewer two-way daily trips than the use of the site for car parking for which there is extant permission. Furthermore, I note that the Council and local highway authority raise no significant concerns in respect of highway safety.
20. The site is situated close to the railway line, from where trains, including freight trains and services running late at night, would be clearly audible. The Noise Assessment by Hawkins Environmental, September 2021, identifies that train noise is limited by the low speeds passing the site due to the proximity of West Malling Station. No specific requirements or measures to protect future residents of the care home against noise from the railway have been identified. However, a condition could reasonably be imposed to secure measures to ensure satisfactory sound levels in residential rooms. Furthermore, I note that the Council's environmental health officer raised no significant concerns in respect of noise for residents on this basis; and that the passing-by of trains may bring a positive mental stimulus for residents.
21. Whilst not expansive, the development would include landscaped outside areas for residents including various patios, lawned areas, and external terraces.

Cumulatively, these would provide sufficient outside space to support satisfactory living conditions for residents in this regard.

22. The site lies outside the defined settlement confines of West Malling and I am advised that the Council cannot currently demonstrate a five-year supply of land for housing. As a result, the Council considers countryside policy CP14 of the Tonbridge and Malling Borough Core Strategy 2007 to be out of date for the purposes of the appeal. While CP14 has not been provided by the Council, there is no specific dispute between the main appeal parties on this point.
23. While I have identified a degree of harm to designated heritage assets of particular importance, in this case the totality of that harm does not provide a clear reason for refusing the development and is outweighed by the substantial public benefits the development would bring. The appellant considers the supply position to be around 2.93 years and the Council has not offered a different figure. In the context of a shortfall of this size, the proposal would make a useful equivalent contribution to housing supply, assuming a 1.8 ratio for communal accommodation, in addition to the benefits identified previously.
24. Aside from the very limited harm to the significance of heritage assets, the development would also bring moderate harm to the character and appearance of the area. There would be substantial public benefits from the provision of 70 care beds, plus the other benefits I have referred to. The moderate overall adverse impacts of the development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conditions

25. The Framework sets out that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. I have considered the Council's suggested conditions on this basis and have made amendments to the wording of those conditions imposed where necessary in the interests of clarity or meeting the tests. In addition, I have drawn on other conditions suggested in representations, where they are necessary to make the development acceptable in planning terms. Some conditions have pre-commencement requirements where this is fundamental to the development permitted. No condition is imposed in respect of charging points for electric vehicles as this is covered by the Building Regulations.
26. In addition to the standard time limit, I have imposed a condition which specifies the approved plans in the interests of certainty. Conditions relating to drainage and parking/turning provision are necessary in the interests of the satisfactory functioning of the development. A condition relating to the provision of vehicle and pedestrian means of access is necessary in the interests of highway safety and improved pedestrian accessibility to Station Road North. Archaeology conditions are necessary due to the archaeological potential of the site. A condition requiring a construction management plan is necessary to ensure satisfactory operations during construction, including due to the proximity of the primary school. A condition relating to land contamination is necessary in the interests of public health. Conditions relating to landscaping and tree retention/protection and external materials are necessary in the interests of character and appearance. Implementation of the travel plan is necessary in the interests of reducing reliance on private car

journeys and achieving satisfactory sound levels in residential rooms is necessary in the interests of living conditions.

Conclusion

27. While there would be conflict with the development plan resulting in some harm to the character and appearance of the area and to the setting of designated heritage assets, this would be outweighed by the public benefits, which provides a clear and convincing justification for the proposal of sufficient weight to indicate that planning permission should be granted. Therefore, for the reasons given above, I conclude that the appeal should be allowed.

C Jack

INSPECTOR

SCHEDULE OF 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:
Site Location Plan 3000-HIA-XX-ZZ-DR- A-0101 Rev P3
Proposed Site Plan 3000-HIA-ZZ-XX-DR-A-0102 Rev P12
Proposed Ground Floor Plan 3000-HIA-01-00-DR-A-0201 Rev P5
Proposed First Floor Plan 3000-HIA-01-01-DR-A-0211 Rev P5
Proposed Roof Plan 3000-HIA-01-03-DR-A-0231 Rev P4
Proposed Elevations 3000-HIA-01-XX-DR-A-0301 Rev P2
Proposed Elevations 3000-HIA-01-XX-DR-A-0302 Rev P2
Proposed Site Elevations 3000-HIA-01-XX-DR-A-0401 Rev P2
B20073 Rev 102B
PC1728-RHD-GE-SW-DR-0052 Rev P06
PC1728-RHD-GE-SW-DR-R-0054 Rev P05
PC1728-RHD-GE-SW-DR-R-0056 Rev P04
PC1728-RHD-GE-SW-DR-R-0058 Rev P03
PC1728-RHD-GE-SW-DR-0060 Rev P03
B20073-TLP-602
20118-ARC-XX-00-DR-D-0001-P2
20118-ARC-XX-00-DR-D-0002-P1
20118-ARC-XX-00-DR-D-0003-P1
20118-ARC-XX-00-DR-D-0004-P1
20118-ARC-XX-00-DR-D-0005-P1.
- 3) No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that due consideration has first been given to the possibility of utilising infiltration techniques and 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 within the curtilage of the site without increase to flood risk on or off-site.
- 4) No development shall take place until a specification and timetable for archaeological field evaluation have been submitted to and approved in writing by the local planning authority. The field evaluation shall be carried out in accordance with the agreed specification and timetable.
- 5) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within 5 working days of their being revealed. Works shall be immediately halted in the area/part of the site affected until provision shall have been made for the retention and/or recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan should include the following:

- a. Routing of construction and delivery vehicles to and from site
- b. Parking and turning areas for construction and delivery vehicles and site personnel
- c. Timing of deliveries
- d. Provision of wheel washing facilities
- e. Temporary traffic management and signage
- f. Provision of measures to prevent the discharge of surface water onto the highway.

The development shall be carried out in accordance with the approved Plan.

- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before development is continued on the affected part of the site.
- 8) No development above slab level shall commence until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and samples.
- 9) No ground works shall commence until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall identify all existing trees and hedgerows on the land to be retained and set out measures for their protection throughout the course of development.
- 10) 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.
- 11) The development shall not be occupied until means of access for vehicles and pedestrians, incorporating footway to Station Road North, have been constructed in accordance with details to be submitted to and approved in writing by the local planning authority. The approved means of access shall be retained thereafter.
- 12) The development shall not be occupied until space has been laid out, surfaced, and drained within the site in accordance with the approved site plan for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes. Any vehicular access gate or barrier shall open away from the highway and be set back a minimum of 10 metres from the edge of the carriageway.
- 13) The development shall not be occupied until provision has been made on site for secure, covered cycle parking in accordance with details to be

submitted to and approved in writing by the local planning authority. The cycle parking facilities shall thereafter be kept available at all times for that purpose.

- 14) The development shall not be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the local planning authority. The Report shall demonstrate that the drainage system constructed is consistent with that approved and shall contain information and evidence (including photographs) of details and locations of inlets, outlets, and control structures; landscape plans; full as-built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 15) The development shall not be brought into use until the Travel Plan by Royal Haskoning DHV dated Monday 01 March 2021 has been implemented and its measures and monitoring shall be adhered to throughout the life of the development, or that of the Travel Plan itself, whichever is the shorter.
- 16) No development above slab level shall take place until a scheme of acoustic mitigation/protection sufficient to achieve levels cited within BS8233:2014 and to ensure satisfactory sound levels are achieved in all residential rooms has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

END.