



Appeal Decisions

Site visit made on 12 April 2023

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Appeal A Ref: APP/H2265/W/22/3300796

83 High Street, West Malling ME19 6NA

- 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 Caxton House Investments Limited against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/02710/FL, dated 7 October 2021, was refused by notice dated 13 December 2021.
 - The development proposed is demolition of existing small outbuilding, demolition of brick element of and alterations to existing ragstone wall, demolition of a curved garden wall, and the construction of two houses with associated hard landscaping, boundary wall extension, cycle stores and fencing.
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Appeal B Ref: APP/H2265/Y/22/3300801

83 High Street, West Malling ME19 6NA

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Caxton House Investments Limited against the decision of Tonbridge and Malling Borough Council.
 - The application Ref TM/21/02711/LB, dated 7 October 2021, was refused by notice dated 13 December 2021.
 - The works proposed are demolition of existing small outbuilding, demolition of brick element of and alterations to existing ragstone wall, demolition of a curved garden wall, and the construction of two houses with associated hard landscaping, boundary wall extension, cycle stores and fencing.
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Decision – Appeal A

1. The appeal is allowed and planning permission is granted for demolition of existing small outbuilding, demolition of brick element of and alterations to existing ragstone wall, demolition of a curved garden wall, and the construction of two houses with associated hard landscaping, boundary wall extension, cycle stores and fencing at 83 High Street, West Malling ME19 6NA in accordance with the terms of the application, Ref TM/21/02710/FL, dated 7 October 2021, subject to the conditions set out in the attached Schedule 1.

Decision – Appeal B

2. The appeal is allowed and listed building consent is granted for demolition of existing small outbuilding, demolition of brick element of and alterations to existing ragstone wall, demolition of a curved garden wall, and the construction of two houses with associated hard landscaping, boundary wall extension, cycle stores and fencing at 83 High Street, West Malling ME19 6NA in accordance with the terms of the application Ref TM/21/02711/LB dated 7 October 2021

and the plans submitted with it subject to the conditions set out in the attached Schedule 2.

Applications for costs

3. Caxton House Investments Limited made applications for awards of costs against Tonbridge and Malling Borough Council in relation to both appeals. These applications are the subject of separate decisions.

Preliminary matters

4. As the proposal is in a conservation area and relates to listed buildings, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act).

Main issues

5. For Appeal A, the main issue is the effect of the proposal on the setting of Nos 83 to 91 High Street, which are Grade II listed buildings, on the special interest of the outbuilding to the rear of No 83, which is also a Grade II listed building, and on the character and appearance of the West Malling Conservation Area.
6. For Appeal B, the main issue is the effect of the proposal on the special interest of the outbuilding to the rear of No 83, on the ragstone boundary wall and on the character and appearance of the West Malling Conservation Area.

Reasons

7. The appeal site lies to the rear of No 83 High Street, part of a group of buildings at Nos 83 to 91 which were listed together at Grade II. The listing description notes that the buildings date from around 1870, comprising shops with living accommodation. The outbuilding, which is listed in its own right (Grade II), was originally separate from the frontage building but has subsequently been linked by an infill extension. The listing description notes that it too dates from around 1870. The northern elevation of the outbuilding forms one side of a narrow twittern that leads from the High Street to a public car park to the rear of the appeal site. On the opposite side of the twittern is the flank wall of a modern supermarket.
8. Both the shops and the outbuilding have architectural and historic interest due to their design, the extent of historic fabric that they retain and the evidence they provide regarding the historic development of West Malling as a commercial centre. The shop at No 83 and the outbuilding are closely related, in functional and design terms, which adds to their significance.
9. To the rear of the outbuilding there is an open plot with a ragstone wall running along the boundary with the twittern. Several courses of modern brickwork have been added, increasing the height of the wall. The wall is not mentioned in either listing description. However, the ragstone element is clearly a historic feature which, in my view, should be regarded as listed by virtue of being within the curtilage of No 83.
10. The West Malling Conservation Area covers much of the settlement. The Council's Conservation Area Assessment (CAA) identifies key features of the historic commercial core, where the appeal site lies. These include a medieval layout, medieval buildings with Georgian facades, the contrast between the width of the High Street and the narrowness of side streets and the diverse

form and contrasting appearances between adjacent properties. The CAA also refers to spaces between buildings showing views of rear outbuildings and extensions arranged in small enclaves. I agree that these are all characteristic features which contribute to the character and appearance of the conservation area.

11. Nos 83 to 91 and the outbuilding make a positive contribution to the conservation area, both through their architectural interest and their contribution to the layout of shops fronting the High Street and outbuildings seen from spaces between frontage buildings.
12. The key features identified in the CAA include open curtilage spaces behind frontage buildings, resulting from the retention of original plot divisions of significant size. At the time the Council refused the appeal applications, it considered that the appeal site was likely to be a medieval burgage plot that was retained when the listed buildings were constructed. In its appeal statement the Council accepted that the site is not a medieval burgage plot. Having regard to the historic map sequence submitted by the appellant, I note that the plot has been subject to various changes over time. I consider that the Council was right to make that concession.

Effect on historic fabric

13. The proposal would require the demolition of a small single storey store attached to the listed outbuilding. Although this structure may contain historic fabric, it has been much altered and appears to have a modern mono-pitch roof. It is of poor quality and neither the appellant nor the Council consider that its demolition would result in any harm to the special interest of the listed building. I agree.
14. The modern brickwork would be removed from the ragstone wall along the twittern and a new capping would be provided. Details of the capping could be controlled by a condition. This would be an improvement in heritage terms because the brickwork detracts from the significance of the ragstone wall, which is a characteristic feature of the conservation area.

Effect on the setting of listed buildings

15. The proposed building would have an L shaped plan, occupying the full width of the plot immediately to the rear of the outbuilding, leaving a small garden area along the southern side of the remainder of the plot. This would have the effect of cutting out views of the back elevations of the frontage buildings and the outbuilding that can currently be seen from the public car park.
16. With regard to No 83, these views are less important, in terms of the ability to appreciate the heritage asset, than views from the High Street and the twittern. The ground floor of the rear elevation has been subsumed in later extensions. Nevertheless, the ability to view the upper floor and the roofscape from the car park adds something to the overall appreciation of the building. I consider the loss of that opportunity would represent less than substantial harm to the significance of the listed building, as that term is used in the National Planning Policy Framework (the Framework). I would characterise the degree of harm as being at the lower end of the spectrum of less than substantial harm. Nevertheless, that does not mean that the harm is

unimportant. The Framework makes clear that considerable importance and weight is to be afforded to any harm to the significance of a listed building.

17. The outbuilding can be seen at close quarters from the twittern and from the private space behind the shops. Those views would be unchanged. The loss of views from the car park would make it harder to see a window in the gable end of the outbuilding, which is an interesting architectural detail. Overall, I would characterise the degree of harm to the significance of the outbuilding as being at the lower end of the spectrum of less than substantial harm.
18. The Council argues that the proposal would crowd the listed buildings and harm the relationship between the outbuilding and the frontage buildings. However, in my view there would be sufficient space between the back of the shops and the proposed building to avoid an unduly overbearing effect. I note that the height of the proposed houses would step up from the outbuilding, but I do not consider that this would be an abrupt change in scale. The relationship between the outbuilding and the frontage buildings would not be harmed.

Effect on the conservation area

19. The loss of the views described above would have a negative effect on the character and appearance of the conservation area and the improvements to the wall would have a positive effect.
20. The effect of the proposal on the wider townscape must also be considered. As noted above, the Council now accepts that this is not a surviving burgage plot. No doubt there are parts of the historic core where such plots are evident, as described in the CAA. However, in the vicinity of the appeal site there are other examples of development behind the frontage buildings. The adjoining supermarket is unusual in that it forms a single block extending well back from the High Street. The courtyards south of Swan Street and the recent development at Mill Yard are more attuned to the grain of the conservation area, creating an attractive sequence of spaces.
21. The design of the appeal scheme would incorporate changes in orientation and roof line, changes in materials and a stepped plan form. These features would articulate the mass of the building. Although it would be a relatively dense form of development, it would incorporate some small garden areas and space for parking and servicing. The Council is concerned about one of the proposed facing materials indicated on the plans. However, I consider that the final choice of materials could be controlled by a planning condition.
22. The car park is an important public space in the conservation area, being the point of arrival for many visitors. Whilst there are several attractive buildings in view, the townscape is somewhat fragmented. The side and rear elevations of the supermarket have a bland and utilitarian appearance. The proposed building would be seen in the context of the supermarket and a large stone building, adjacent to the car park, which has been converted to new uses. To my mind the appeal scheme would provide better enclosure to the edge of the car park, thereby improving the townscape at this point.
23. Some representations have expressed concerns that the narrow twittern would become unattractive to use due to the height and proximity of the proposed building. The twittern is an important public route between the car park and the High Street. However, the existing boundary wall within the appeal site is

already above eye level. The wall would be reduced in height, as described above. The proposed building would have an eaves level at a height of one and a half storeys. Although it would be sited close behind the ragstone wall, in practical terms I do not think that the narrow, enclosed feel of the twittern would be much different to the existing situation. There are clear views along to the twittern to the High Street and car park at either end, such that it would not feel like an unsafe place to be.

24. There would therefore be positive and negative effects on the conservation area. My overall assessment is that the improvement to the townscape, together with the improvement to the characteristic ragstone wall, would outweigh the loss of views described above. There would therefore be a net benefit to the character and appearance of the conservation area. This should be regarded as a heritage benefit when carrying out the balancing exercise set out in the Framework¹.

Conclusions on the main issue

25. The proposal would accord with Policy CP24 of the Tonbridge and Malling Core Strategy (CS) , which states that development should be well designed and respect its surroundings. It would also accord with Policy SQ1 of the Managing Development and the Environment Development Plan Document, which seeks to protect local distinctiveness. There would be less than substantial harm to two listed buildings. Considerable importance and weight should be attached to that harm. The Framework requires the harm to be balanced against the public benefits of the appeal scheme. I return to that balance in the conclusions to these decisions.

Other matters

26. The proposal is located within the core of the settlement with ready access to the services it provides. There is no dispute that, in general terms, this is a suitable location for housing. There is also no dispute that the Council cannot demonstrate the five-year supply of deliverable housing sites required by the Framework. It follows that the approach to decision making set out in paragraph 11(d) of the Framework is engaged.
27. The proposal would provide two new houses, which would be a social and an economic benefit. Although this would be a modest contribution to overall supply, it would provide housing in an accessible location. I attach moderate weight to this factor.
28. Representations objecting to the proposal were made by the Parish Council and residents. Many of the matters raised have been discussed above. Concerns were also raised about parking, traffic and impacts on the living conditions of nearby residents. The proposal includes one parking space for each unit which accords with the Council's standards. There would be little change to the existing access arrangements and any additional traffic generated by the proposals would be negligible in the context of the busy car park from which the site is accessed. Concerns have been raised about a private right of access but this is a matter to be resolved between the landowners concerned.
29. The elevation facing the back of the properties fronting High Street, and the gable elevation adjoining the southern site boundary, would not contain

¹ Paragraph 202

windows. Consequently, I do not consider that there would be harmful overlooking. There would be sufficient spacing between the proposed building and nearby properties to avoid either a harmful impact on natural light or an unduly enclosing effect. I conclude that the proposal would not be harmful to living conditions.

Conditions

30. The Council has suggested conditions for both appeals which I have considered in the light of Planning Practice Guidance. In some cases, I have adjusted detailed wording in the interests of clarity. I agree that conditions requiring development/works to be in accordance with the approved plans are necessary in the interests of clarity and certainty.
31. For Appeal A, a condition relating to construction management is necessary in the interests of highway safety and the living conditions of nearby residents. A condition securing an archaeological watching brief is necessary to protect the archaeological potential of the site. Conditions requiring details of slab levels, external materials and doors/windows are necessary to protect the character and appearance of the conservation area. A condition requiring parking spaces to be laid out in accordance with the plans is necessary to ensure that proper provision is made for the vehicles of future occupiers. A condition relating to contaminated land is necessary in the interests of managing risks of pollution.
32. For Appeal B, a condition requiring details of the proposed brick capping to the boundary wall is necessary to protect the special interest of the listed building. A condition requiring works to be in accordance with the submitted method statement is necessary for the same reason.

Conclusion

33. The Framework requires the public benefits of the scheme to be weighed against the less than substantial harm that I have identified in relation to No 83 and the outbuilding. Public benefits can include heritage benefits as well as other benefits. The heritage benefits include the improvements to the townscape, particularly in relation to the area around the car park, and the improvements to the ragstone wall adjacent to the twitten. These would enhance the character and appearance of the conservation area. The improvements to the ragstone wall would also better reveal the significance of a listed building. I attach substantial weight to these benefits because they would enhance important public spaces within the conservation area. The social and economic benefit of new housing in an accessible location attracts moderate weight, as discussed above. To my mind, the benefits would outweigh the harms, such that the proposal would accord with the Framework. The conclusion is the same whether the listed buildings are considered individually or cumulatively.
34. For Appeal A, I conclude that the proposal would accord with the development plan for the reasons given above. The approach to decision making set out in paragraph 11(d) does not therefore alter my finding on the main issue. There are no other considerations that indicate a decision other than in accordance with the development plan, so Appeal A should be allowed.
35. For Appeal B, I have not identified any harm to the special interest of the outbuilding through loss of historic fabric. Nor have I identified harm in relation

to the works to the ragstone boundary wall. Appeal B should therefore be allowed.

David Prentis

Inspector

Schedule 1 – Conditions for Appeal A

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development shall be carried out in accordance with the following approved plans: 3025/9000 v00; 3025/9001 v01; 3025/9002 v09; 3025/9005 v02; 3025/9006 v04; 3025/9007 v01
- 3) No above ground works except survey work shall take place until arrangements for the management of demolition and construction work have been submitted to and approved in writing by the Local Planning Authority. The arrangements shall include:
 - a) the days of the week and hours of the day when demolition and construction works will take place and measures to ensure these are adhered to;
 - b) procedures for managing traffic movements associated with the construction works including the delivery of building materials to the site (including the times of the day when those deliveries will take place and how/where materials will be offloaded into the site) and for the management of all other construction related traffic and measures to ensure these are adhered to;
 - c) procedures for notifying neighbouring properties of the timetabling of works, the nature of the works and their duration;
 - d) the parking of contractor's vehicles within or around the site during construction and any external storage of materials or plant; and
 - e) controls on noise and dust.

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

- 4) No development other than demolition or survey work 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 in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved programme and specification.
- 5) No development other than demolition or site survey work shall take place until details of slab levels have been submitted to and approved in writing by the Local Planning Authority. The details shall include a scaled cross section showing the proposed development in relation to adjacent buildings. The development shall be carried out in accordance with the approved details.
- 6) No above ground development other than demolition or site survey work shall take place until details and samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 7) No above ground development other than demolition or site survey work shall take place until details of the windows and doors, including materials and joinery details, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) The dwellings shall not be occupied until the area shown on the submitted layout plan as vehicle parking and turning 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 2015 (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.
- 9) If during development significant deposits of made ground or indicators of potential contamination are discovered, the work shall cease until an investigation/remediation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall thereafter be implemented as approved.

Any soil brought onto the site shall be clean and a soil chemical analysis shall be provided to verify that imported soils are suitable for the proposed end use.

A closure report recording the measures taken to implement the approved strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development.

Schedule 2 – Conditions for Appeal B

- 1) The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.
- 2) The development shall be carried out in accordance with the following approved plans: 3025/9000 v00; 3025/9001 v01; 3025/9002 v09; 3025/9005 v02; 3025/9006 v04; 3025/9007 v01
- 3) No above ground works other than survey work shall take place until details of the works to the boundary wall, including source, type and photographic sample of the proposed capping brick have been submitted to and approved in writing by the Local Planning Authority. Should underpinning of the wall be required, prior to the commencement of the works a structural engineer's report detailing the method and extent of underpinning, including a notated plan, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 4) All demolition and making good works shall be carried out in accordance with the method statement set out in Appendix A of the Burns Guthrie Statement of Significance document dated September 2021 and received 8 October 2021.

End of schedule of conditions