

Appeal Decision

Site visit made on 2 September 2024

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/H2265/W/24/3340308

Hadlow Manor Hotel, Maidstone Road, Hadlow, Tonbridge TN11 0JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Geoffrey Goddard of CQK Limited against Tonbridge and Malling Borough Council.
 - The application reference is TM/22/01237/FL.
 - The development proposed is redevelopment of Hadlow Manor Hotel to residential use, conversion of listed building into 6no. flats, demolition of modern extensions and construction of 6no. houses on previously developed land.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of Hadlow Manor Hotel, Maidstone Road, Hadlow, Tonbridge TN11 0JH to residential use, conversion of listed building into 6no. flats, demolition of modern extension and construction of 6no. houses on previously developed land, in accordance with the terms of the application reference TM/22/01237/FL and subject to the conditions in the attached schedule.

Preliminary Matters

2. Listed building consent for the works subject of this appeal was granted by the Council under reference TM/22/01238/LB dated 26 April 2024.
3. The appellant has submitted 2 unilateral undertakings, both dated 29 July 2024, under section 106 of the Town and Country Planning Act 1990. The first contains obligations that would secure financial contributions sought by Tonbridge and Malling Borough Council towards the provision of off-site affordable housing and open space. The second contains obligations sought by Kent County Council and would secure financial contributions towards education, community facilities, social care and waste disposal. I consider these obligations in more detail in my reasoning.
4. A written ministerial statement and consultation on proposed changes to the National Planning Policy Framework (the Framework) were published on 30 July 2024. As the changes are in draft form and may change depending on the outcome of the consultation, I give them little weight.

Main Issues

5. The Council has no objection in principle to the proposed development, including on Green Belt, heritage, highway or environmental grounds. The only issue that remains in dispute between the main parties is over the provision of affordable housing and mitigating the effect of the development on infrastructure and services. I have therefore focused my attention on this latter issue, although as the building is statutorily listed I also have a duty to consider the proposal against section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Consequently, the main issues are:
- The effect of the proposed development on the provision of affordable housing and the infrastructure and services necessary to support the proposed use, and
 - Whether the proposed development would preserve the Grade II listed building or any features of special architectural or historic interest that it possesses.

Reasons

Affordable housing, infrastructure and services

6. Policy CP17 of the Tonbridge and Malling Core Strategy 2007 (the Core Strategy) requires new residential development to provide an element of affordable housing. The policy recognises that in exceptional circumstances, it may be agreed that affordable housing may be provided on another site or by means of a commuted payment. In this case, because of the nature of the proposal (large, detached dwellings and flats within a listed building) the Council accepts that exceptional circumstances exist to agree a commuted payment rather than the provision of affordable housing on site. I agree.
7. Due to uncertainties around the viability of the scheme, and how the commuted sum should be calculated, I note that prior to the appeal being lodged the main parties had agreed in principle to use a late-stage review mechanism to determine the commuted payment for affordable housing. It is accepted by the Council that the difference in the timing of the payment would not be significant in this case, given the benefits that such a mechanism would provide in resolving the uncertainties over valuation.
8. Notwithstanding the arguments made in both main parties' statements of case that departed from that approach, the appellant has subsequently submitted an obligation in the first unilateral undertaking incorporating a late-stage review mechanism to determine the commuted sum for affordable housing, based on the previously drafted heads of terms. This effectively supersedes the arguments put to me on viability and how it should be calculated. The Council queries the gross development value used. As this is based on a previously agreed position with indexation applied, I consider that to be an acceptable figure in this case.
9. The Council says that it needs more time to review the late-stage review, notwithstanding the deadline given for a response. As the Council has previously agreed in principle to such a mechanism, and some time has passed since the undertakings were submitted, I consider that it has had

adequate time to respond. In the interests of avoiding delay, it is incumbent on me to reach a decision on the appeal.

10. Policy OS3 of the Tonbridge and Malling Managing Development and the Environment Development Plan Document, 2010 (the Management Plan) requires residential developments of 5 or more units to provide open space, or an equivalent financial contribution, in accordance with specified standards. The parties are agreed that in this case the requirement for open space is best achieved through a financial contribution. I am satisfied that a suitable contribution for that purpose, calculated in accordance with the advice from the Council, is secured by an obligation in the first unilateral undertaking.
11. The County Council seek financial contributions to mitigate the additional demands arising from the proposal that would be placed on public facilities and services provided by them. In this case contributions are sought towards the provision of secondary and special needs education, community and children's services, library provision, adult social care, and waste disposal.
12. Policy CP25 of the Core Strategy requires development proposals to incorporate the infrastructure necessary to support them, or make provision for financial contributions and/or land to secure such infrastructure or service provision at the time it is needed. Justification for each of the facilities and services, and formulae for calculating appropriate contributions, is set out in the Kent County Council Developer Contributions Guide 2023. The obligations contained in the appellant's second unilateral undertaking would secure the contributions sought by the County Council.
13. The County Council contests some points of drafting in the second undertaking. A clause making the undertaking applicable to any subsequent variations of conditions attached to the permission under section 73 of the Town and Country Planning Act 1990 may be administratively efficient but is not necessary for the purposes of this proposal. The undertaking contains a location plan adequate to identify the site in question, so I do not consider it requires changing to that submitted with the application.
14. So far as the other 2 points are concerned, I note the County Council's preferences for payment to be indexed from Q1 2022 rather than the date of the undertaking, and for payment to be triggered prior to occupation rather than on occupation of the 8th dwelling. These are details that would normally have been resolved through negotiation during the course of the application. However, I must make my decision based on the evidence before me. I acknowledge that the second legal undertaking as drafted would result in slightly smaller financial contributions than might normally be the case, and those contributions being paid at a slightly later point during the development, but I consider those differences would be small and would not, in the circumstances of this case, amount to sufficient reason to oppose the proposal or introduce further delay to my decision.
15. The obligations contained in the legal undertakings are required to meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010, repeated in paragraph 57 of the Framework. I consider that the requirement for an affordable housing commuted sum, and the contributions towards infrastructure and services, are necessary to make the development acceptable in accordance with the policies noted above and to mitigate the

pressure on public services that would arise from the development. I also consider that they are directly related to the development and are reasonably related in scale and kind.

16. Where there remain differences between the parties over the calculation of the affordable housing contribution, I consider that the use of a late-stage review mechanism is a sensible and appropriate means of determining the scale of that contribution and accords with the tests in the Regulations.
17. For those reasons, I give weight to all the obligations set out in the submitted legal undertakings in meeting the requirements of Policies CP17 and CP25 of the Core Strategy and Policy OS3 of the Management Plan.

Listed building

18. The former Hadlow Manor Hotel is a grade II listed building whose significance and special interest lies in its elegant architectural form as an example of a mid to late Georgian country house with symmetrical front in buff brick, sash windows, pillared porch and low-pitched roof behind a parapet. It also has added historical interest as there are parts of an earlier medieval timber framed house incorporated in the Georgian building. Significant extensions were added to it during the 19th and 20th centuries, the latter to enable its conversion to a hotel. The interior was also altered at that time to accommodate hotel bedrooms and ancillary functions. The original building retains a spacious setting to its front and road elevations.
19. The proposed development would see the demolition of the later 20th century extensions, alterations to the retained Georgian House to enable its conversion to residential flats, and the erection of 6 houses to the south on land that is currently occupied by hotel accommodation and car parking. The scheme has been amended in the light of pre-application advice from the Council, which is satisfied that it would preserve the listed building, and that overall there would be a heritage benefit.
20. The conversion to flats would result in the loss of some original fabric, including walls and chimney breasts, as well as the insertion of new partition walls and a window in the southwest elevation. However, the plan form of the main reception rooms on the ground floor would remain legible, the original staircase would be retained, and no principal architectural features would be lost. The limited harm caused by the loss of original fabric is outweighed by the benefit of reusing the building in an optimum viable use, so ensuring its continued preservation.
21. Demolition of the later extensions to the rear and to the south of the original building would be beneficial to its significance in removing competing building bulk and opening up views of the original house, allowing a better appreciation of it. The introduction of 6 new dwellings to the south of the retained building would detract from the open setting of the listed building as it would originally have had, but would be no greater in bulk than the buildings to be removed, and being detached and further away from the listed building the net effect would be beneficial.
22. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving the

listed building or its setting or any features of special architectural or historic interest which it possesses. I agree with the conclusions of the heritage statement and the Council's Conservation Officer that the net impact of the development would be beneficial to the significance and setting of the grade II listed building. There is therefore no need to weigh the scheme against public benefits.

Other Matters

23. The Council has assessed the proposed development against the development plan and national planning policy and concluded that it would not cause harm to matters of acknowledged importance, including the Green Belt, the character and appearance of the area, neighbouring residential amenity, highway safety, parking, biodiversity and flood risk. Having regard to the submitted documents and the evidence contained in the Council's statement of case, I see no reason to reach different conclusions on these matters.

Conditions

24. I have taken account of the views of both parties on conditions and imposed those suggested where I consider they meet the tests set out in paragraph 56 of the Framework. I have adjusted some wording in the interests of consistency and simplicity. The conditions have been reordered in accordance with the advice in the Planning Practice Guidance.
25. In addition to the time limit condition, a condition setting out the approved plans is necessary for certainty. I have not included associated assessments or statements as these are not part of the approved plans. I have also not included the landscape master plan or external lighting plan as details of landscaping and external lighting are required under separate conditions.
26. A condition requiring a construction environmental management plan is necessary in the interests of minimising disturbance to neighbouring occupiers during construction. Conditions requiring tree protection, surface water drainage design, contamination assessment and archaeological assessment are necessary in the interests of the appearance of the site, its proper drainage, safety of future occupants, and recording of any finds of archaeological interest. All are required as pre-commencement conditions because they need to be resolved or procedures approved before development commences on site. The appellant has confirmed in writing that there is no objection to the pre-commencement conditions.
27. Conditions requiring external materials, slab heights and landscaping to be approved are necessary in the interests of the appearance of the site and its relation with neighbouring properties. The landscaping condition does not need to be a pre-commencement condition and I have adjusted its wording accordingly. A condition requiring confirmation that the surface water drainage system has been installed and measures for its operation and maintenance agreed is necessary in the interests of future occupiers of the development and to avoid the risk of flooding on and off site.
28. A condition requiring details of external lighting is necessary in the interests of neighbouring amenity and biodiversity on the site. There is no need for

separate conditions as the details approved by the Council can take into account both interests.

29. Conditions requiring provision of car parking, refuse storage, cycle storage, fibre connectivity and control over noise are necessary in the interests of the living conditions of future occupants. I have deleted the requirement for electric vehicle charging as this is now covered by the building regulations.
30. A condition requiring the replacement of trees or hedges to be retained on the site but which die or are damaged is necessary in the interests of the appearance of the site and its biodiversity value.
31. I have not imposed a condition restricting domestic permitted development rights as that would be contrary to the advice in paragraph 54 of the Framework as there is no clear reason to do so. I have not imposed a condition requiring sewerage works as these are subject to control under separate regulations. I have also not included a separate condition requiring details of how biodiversity will be enhanced as the requirement to approve landscaping details makes this unnecessary.

Conclusion

32. I conclude that, subject to the obligations contained in the 2 unilateral undertakings submitted with the appeal, the proposal accords with the development plan when taken as a whole. There are no material considerations that suggest a decision should be made otherwise than in accordance with it.
33. I therefore conclude that the appeal should be allowed.

Guy Davies

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall begin before the expiration of 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 J823 T01
 - Block Plan J823 T02
 - Existing Site Survey J823 SU 01
 - Existing Site Survey 2 J823 SU 02
 - Existing Site Survey 3 J823 SU 03
 - Existing Site Plan J823 SU 07
 - Ground Floor Plan 1 J823 SU 08
 - Existing Extension Ground Floor Plan J823 SU 09
 - Existing First Floor Plan J823 Su 10
 - Existing First Floor Extension Pan J823 SU 11
 - Proposed Site Plan J823 01 D
 - Proposed Site Plan J823 02 D
 - 3D Views 1 J823 03
 - 3D Views 2 J823 04
 - Site Sections and 3D Views J823 05
 - Ground Floor Plans J823 06
 - First Floor Plans J823 07
 - Second Floor Plans J823 08
 - Elevations 1 J823 09
 - Elevations 2 J823 10
 - Elevations 3 J823 11
 - Type 1 Plans J823 12 C
 - Type 2 Plans J823 14 C
 - Type 3 Plans J823 16 C
 - Type 1 Elevations J823 13 C
 - Type 2 Elevations J823 15 C
 - Type 3 Elevations J823 17 C
 - Flat 3 Chimney Removal Plan A0044 sk 01 A
 - Demolition Volumes J823 SU05
 - Proposed Volumes J823 SU06
3. No development shall take place until a construction environmental management plan has been submitted to and been approved in writing by the local planning authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan shall include, but not be limited to:
 - Mitigation measures as defined in BS 5228, Noise and Vibration Control on Construction and Open Sites shall be used to estimate LAeq levels and minimise noise disturbance from construction works.
 - Measures to minimise the production of dust on the site.

- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barriers.
 - Design and provision of site hoardings.
 - Management of traffic visiting the site including temporary parking or holding areas.
 - Provision of off road parking for all site operatives.
 - Measures to prevent the transfer of mud and extraneous material onto the public highway.
 - Measures to manage the production of waste and to maximise the re-use of materials.
 - Measures to minimise the potential for pollution of groundwater and surface water.
 - The location and design of site office and storage compounds.
 - The location of temporary vehicle access points to the site during the construction works.
 - The arrangements for public consultation and liaison during the construction works.
 - Measures for controlling the use of site lighting whether required for safe working or for security purposes.
4. No development shall take place until tree protection details in accordance with the current edition of BS 5837 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. No equipment, machinery or materials shall be brought onto the site prior to the erection of approved tree protection barriers and/or ground protection except to carry out pre commencement operations approved in writing by the local planning authority. These measures shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the protected areas. No alterations shall be made to the siting of barriers and/or ground protection, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority.
5. 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 be based upon the Surface and Foul Water Drainage Strategy prepared by Cole Easdon Consultants Limited dated June 2023 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 1:100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate:
- 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.

6. No development shall take place until the following have been submitted to and approved by the local planning authority:
 - (a) a contaminated land desktop study identifying all previous site uses, potential contaminants associated with those uses including a survey of the condition of any existing buildings to be retained, a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site;
 - (b) based on the findings of the desktop study, proposals for a site investigation scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site. The site investigation scheme should also include details of any site clearance, ground investigations or site survey work that may be required to allow for intrusive investigations to be undertaken.

If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.

7. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the local planning authority:
 - (a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as contaminated land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended). The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the local planning authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.
 - (b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

8. Following completion of the approved remediation method statement, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the local planning authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.
9. No development shall take place until the following actions have been carried out:
 - i archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority
 - ii any further archaeological investigation, recording and reporting, determined by the results of the evaluation, in accordance with a specification and timetable which has been submitted to and approved by the local planning authority
 - iii a programme of post excavation assessment and publication.
10. Prior to any above ground development taking place, details of the proposed finishes and materials to be used externally shall be submitted to and approved in writing by the local planning authority and the remaining development shall be carried out using the approved external materials.
11. Prior to any above ground development taking place, details of the proposed slab level and finished floor levels of the dwellings hereby approved, shown in relation to a fixed point in an adjacent road shall be submitted to and approved in writing by the local planning authority and the remaining development shall be carried out in accordance with the approved levels.
12. Prior to any above ground development taking place, a scheme of landscaping and boundary treatment shall be submitted to and approved in writing by the local planning authority. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species. Any boundary fences or walls or similar

structures as may be approved shall be erected before first occupation of the building to which they relate.

13. The development hereby permitted shall not be occupied until a verification report, pertaining to the surface water drainage system has been submitted to and approved by the local planning authority. The report shall demonstrate that the drainage system constructed is consistent with that which was approved. The report shall contain information and evidence 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.
14. The development hereby permitted shall not be occupied until details of any external lighting to be installed at the site have been submitted to and approved in writing by the local planning authority. External lighting shall be installed in accordance with the approved details and no further external lighting shall be installed at any subsequent time.
15. The development shall not be occupied until the areas shown on Proposed Site Plan 01 & Proposed Site Plan 02 as vehicle parking/turning space have been provided and shall be retained for the use of the occupiers of, and visitors to, the development.
16. The development hereby permitted shall not be occupied until details for the storage and screening of refuse and recycling facilities have been submitted to and approved in writing by the local planning authority and have been installed in accordance with the approved details. The refuse and recycling facilities shall be retained thereafter.
17. The development hereby permitted shall not be occupied until details of cycle storage has been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved details. The cycle storage shall be retained thereafter.
18. The development hereby permitted shall not be occupied until plans have been submitted to and approved in writing by the local planning authority demonstrating the provision of full fibre connectivity infrastructure within the development. The development shall be carried out in accordance with these plans and retained thereafter.
19. The development hereby permitted shall not be occupied until details of noise mitigation measures have been submitted to and approved in writing by the local planning authority and the measures have been installed in accordance with the approved plans. The details shall consider the levels cited in BS8233:2014 and how these will be achieved, namely:

- a) for gardens and other outdoor spaces, in particular those in para 7.7.3.2 which states a desirable limit of 50dB LAeq,1-hour, and a maximum upper limit of 55dB LAeq,1-hour; and
- b) to secure internal noise levels no greater than 30dB LAeq, 8-hr (night) and 35dB LAeq, 16-hr (day) in bedrooms, 35dB LAeq, 16-hr (day) in living rooms and 40dB LAeq, 16-hr (day) in dining rooms/areas (ref para 7.7.2). Particular attention is drawn to the notes accompanying Table 4 in para 7.7.2 and that these levels need to be achieved with windows at least partially open unless satisfactory alternative means of ventilation is to be provided.
20. Any existing trees or hedges retained on site which, within a period of five years from the first occupation of a property, commencement of use or adoption of land, die or become, in the opinion of the local planning authority, so seriously damaged or diseased that their long term amenity value has been adversely affected, shall be replaced in the same location during the next planting season (October to February), with plants of an appropriate species and size to mitigate the impact of the loss.

***** End of conditions *****