

REPORT SUMMARY

REFERENCE NO: - 19/506031/LBC

APPLICATION PROPOSAL:

Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.

ADDRESS: Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ

RECOMMENDATION: Grant Listed Building Consent subject to conditions set out in Section 11.0

SUMMARY OF REASONS FOR RECOMMENDATION:

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.

A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.

The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.

In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).

The significance of the walls and historic interest are limited to the materials used, method of construction and wall alignment. The proposed works involving the lowering of the wall

and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden wall, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouse.

REASON FOR REFERRAL TO COMMITTEE:

Cllr Patrik Garten has referred this application to committee.

WARD:
North Downs

PARISH/TOWN COUNCIL:
Hollingbourne

APPLICANT: Mr Dixon
AGENT: DHA Planning

CASE OFFICER:
Rachael Elliott

VALIDATION DATE:
03/06/20

DECISION DUE DATE:
22/01/21

ADVERTISED AS A DEPARTURE: NO

MAIN REPORT

Relevant Planning History

18/506662/FULL Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. Pending Consideration (separate report on this agenda).

18/500228/FULL Conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area. Refused 17.04.2018 for the following reasons:

- 1) *The proposed external works and extension due to the, design, scale and bulk of the proposals fail to respect the character and appearance of the existing buildings and would result in an overly domestic, urban and disjointed appearance that fails to respect the existing buildings contrary to Policies SP17, DM1, DM30, DM31 and the National Planning Policy Framework 2012.*
- 2) *The application fails to demonstrate that the buildings are of sound construction and their re-use and the reconstruction in the form proposed can be achieved without major or complete reconstruction contrary to Policy DM31 of the Maidstone Borough Local Plan 2017.*
- 3) *The proposed development would be located in an isolated position within the defined countryside, as established by adopted Local Plan Policy SS1 and SP17 which places emphasis on housing development within sustainable locations. The application for the creation of additional dwellings here has failed to demonstrate a significant environmental improvement and that the site can be reasonably made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village as is therefore contrary to Policies SS1, SP17 and DM5 of the Maidstone Borough Local Plan 2017 and the National Planning Policy Framework 2012.*

- 14/0201 Change of use of studio outbuilding and associated service areas to a purpose incidental to the enjoyment of Mulberry and Well Cottages, and erection of fencing around a tennis court. Granted 07.04.2014

- 99/1078 Listed building consent for partial reduction in height of garden wall and formation of new gateway Granted 16.08.1999

- 99/0120 Retrospective listed building consent application for partial demolition of garden wall to provide fire escapes to building regulations requirements and amenity to office and workroom facilities. Refused 19.03.1999 for the following reasons *"The section of wall, the subject of this proposal is listed having been erected prior to 1948 and is within the historic curtilage of Hollingbourne House which is a grade II listed building. It is considered that this section of wall forms an important and integral part of the historic setting of Hollingbourne House and its demolition adversely affects the special historic and architectural interest of this listed building and its curtilage contrary to policy ENV19 of the Kent Structure Plan 1996, policies ENV3 and ENV4 of the Maidstone Local Plan 1993 and policies ENV11 and ENV12 of the Maidstone Wide Local Plan (Deposit) draft"*.
- 99/0119 (Part retrospective) Insertion of windows and doors to north east elevation of the office and workroom facilities Granted 19.03.1999
- 97/1765 Change of use to a mixed use for photographic business (B1) and continuation of existing carpentry business ancillary to existing electronic workshop, and external alterations. Granted 01.05.1998 with conditions including a restriction to only B1(b) and B1(c) for the reason that "Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers" and stating that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays in order to safeguard the enjoyment of their properties by adjoining residential occupiers.
- 89/1936 Erection of detached garage block. Granted 20.02.1990
- 83/1419 Retrospective application for change of use from residential to electronic workshop and office. Granted 28.12.1983

1. DESCRIPTION OF SITE

See separate report for 18/506662/FULL

2. PROPOSAL

- 2.01 This application is linked to the application for full planning permission under reference 18/506662/FULL which is under consideration separately on the agenda.
- 2.02 The application for listed building consent relates to the demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other curtilage listed garden walls and restoration of 1 sunken glasshouse.

3. BACKGROUND

- 3.01 The Council issued a planning decision notice on the 29 March 2019 for the application under reference 18/506662/FULL, with the decision notice granting conditional planning permission.
- 3.02 On behalf of the occupier of Hollingbourne House, the Council were informed on the 7 May 2019 (Pre-Action Protocol letter) of the intention to submit a judicial review against the decision to grant planning permission on four separate grounds.
- 3.03 The Council indicated in a response letter dated 16 May 2019 that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development"*. The Council accepted that

for this reason it would not contest the claim which should succeed under Claimant's grounds 2 and 3.

- 3.04 A High Court Consent Order dated 8 July 2019 quashed the decision made by the Council to grant planning permission on the 29 March 2019.
- 3.05 This application, together with a Listed Building Consent application for the *Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse..* were subsequently reported to Planning Committee on 17th December 2020 to reconsider the decision on this application and determine the Listed Building Consent submission. Members resolved to grant planning permission for the development specified in Section 1.0 above and Listed Building Consent under application 19/506031/LBC.
- 3.06 The decisions were issued on 21st January 2021.
- 3.07 A case to Judicially Review the decision was subsequently brought forward by the immediate neighbour in relation to both the grant of full planning permission (18/506662/FULL) and Listed Building Consent (19/506031/LBC). This was initially refused permission to proceed by Mr Tim Mould QC, decision dated 5 May 2021. A renewed oral hearing by Lang J granted permission to bring forward substantive judicial review proceedings on four grounds. These being as follows :
- (i) MBC erred in its interpretation of the Local Plan policy DM5 "Development on brownfield land";
 - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
 - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
 - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
- 3.08 The High Court in a ruling dated 14 July 2022 rejected all 4 grounds stating, in summary, the following :
- Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.***
- 3.09 Permission was granted by the Court of Appeal to appeal against the High Court's decision on 2 grounds these in summary being :

1. The proper interpretation of, Policy DM5, in the Maidstone Borough Local Plan and the meaning of 'site'; in particular whether this means the whole of the site the subject of the application, including the garden to the rear of the main application building, or whether 'site' in the context of DM5 excluded the garden to the rear.
2. Whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration

In its decision dated 22 February 2023 the Court of Appeal found that the Council had misinterpreted policy DM5, stating that :

The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.

- 3.10 The second ground of appeal was rejected by the Court of Appeal.
- 3.11 All four decisions referred to above are attached for information as appendices to this report as described below :

Appendix A : Copy of Timothy Mould QC decision on the papers dated 5 May 2021

Appendix B : Copy of High Court Judgement dated 14 July 2022

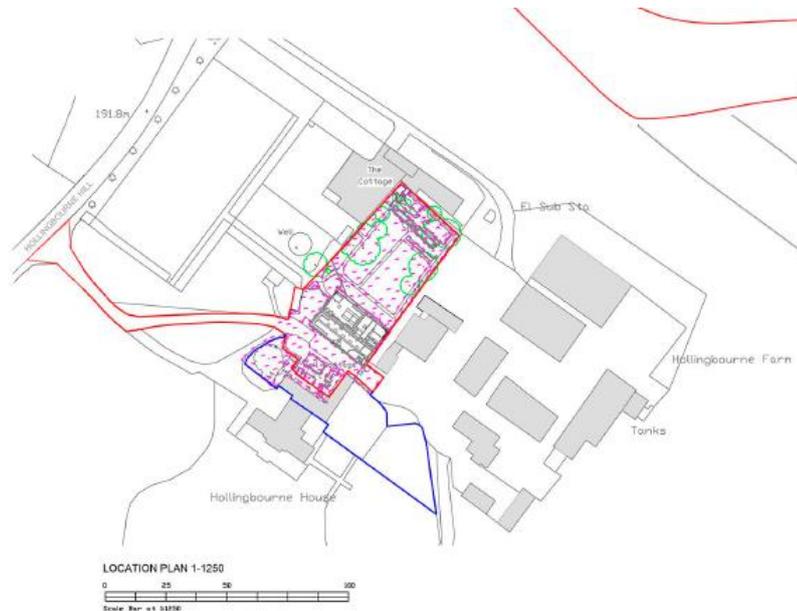
Appendix C : Copy of Court of Appeal Judgement dated 22 February 2023

Appendix D : Copy of Order to Consent dated 8 July 2019

- 3.12 As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

4. KEY JUDGEMENT SUMMARY

- 4.01 The Court of Appeal found that the Council's earlier determination of what constitutes 'the site' in this case for the purposes of applying Policy DM5 was erroneous. , The December 2020 committee report solely considered the building itself in relation to its environmental value, rather than the entire site outlined in red (see map area identified as being within the red line (extract below)



4.02 The point which was made by the Appellant and which was accepted by the Court of Appeal is that in order to make a proper planning judgment in the application of DM5 about whether or not the site is of high environmental value and whether the proposed development will result in significant environmental improvement, it is necessary to consider the site in its entirety, including the main application building but also the walled garden to its rear and the access route to the highway. The judgement highlights what should be considered as 'the site', which is *the existing building, the walled gardens and the land connecting with the road* (paragraph 25 of Appendix C.)

4.03 Paragraphs 25 and 26 continue by setting out the key considerations the Council will need reconsider, now that the court of Appeal has quashed the Council's decision. In summary being :

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

5. MATERIAL CHANGES SINCE EARLIER DECISION

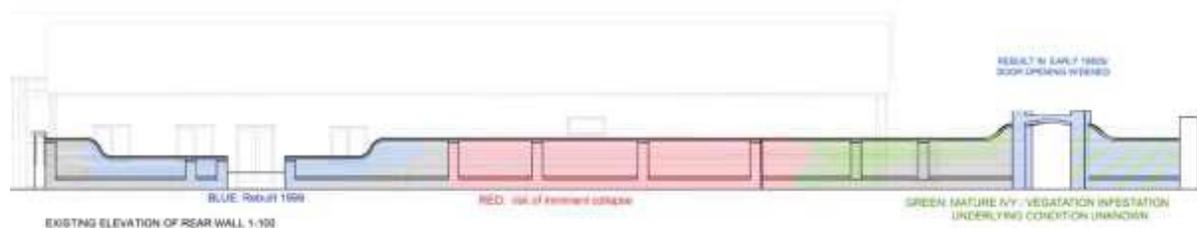
5.01 The Maidstone Borough Council – Local Plan Review Regulation 22 Submission has been made and Local Plan Hearings are ongoing. The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is however limited, as it has yet to be the subject of a full examination in public.

5.02 The National Planning Policy Framework (NPPF) was revised on 20 July 2021.

5.03 Due to health and safety concerns, a section of the north-east facing garden wall has been removed/lowered and the bricks stored securely behind the remaining wall.



- 5.04 The existing elevations of the wall submitted with the application (see plan below), therefore now differ from the 'on the ground' situation. Areas highlighted in green have now been removed and those in red lowered.



- 5.05 The applicant is aware that the works carried out are without the benefit of a current consent. Amended plans are not required as the existing plan indicates the lawful height and position of the wall.

6. POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan 2017
Policies SP18, DM1, DM4,
 - National Planning Policy Framework (NPPF)
 - National Planning Practice Guidance (NPPG)

 - Emerging Policies – Maidstone Borough Council – Local Plan Review Regulation 22 Submission
The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is limited, as it has yet to be the subject of a full examination in public
- Policy LPRSP15 (B) – The Historic Environment
Policy LPRENV 1 – Historic Environment

7. LOCAL REPRESENTATIONS

Local Residents:

See separate report for 18/506662/FULL

Councillor Patrik Garten

- 7.01 The policy determining conversion of rural buildings, Policy DM31 permits residential use only where every reasonable attempt has been made to secure a

business re-use of the building. Evidence setting out why the business re use is not appropriate for the buildings needs to be provided and ought to be scrutinised by committee.

- 7.02 Neighbours allege that the proposed works are unsympathetic, overly domesticated and fail to respect the character and appearance of the setting of the Grade II listed Hollingbourne House. As this is partially a subjective assessment, it should be considered by a committee.
- 7.03 As my previous reasons explains, the reason for call-in is mainly to secure public confidence in the planning process, which was previously thwarted and required a judicial review. While I welcome the amended details, they do not overcome the unfortunate history of this case.

Hollingbourne Parish Council

- 7.04 Do not wish to comment/object.

8. CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

Historic England

- 8.01 No comment. On the basis of the information provided, we do not consider that it is necessary for this application to be notified to Historic England under the relevant statutory provisions.

Conservation Officer (MBC)

- 8.02 I support the application and raise no objections from a conservation point of view. The works are wholly in line with our discussions on site and the submission is clear and of good quality
- 8.03 The initial proposal relating to the historic wall adjacent to the development site was that it would be demolished and relocated. I took the view that this would cause harm to a heritage asset and for no clear benefit.
- 8.04 The solution agreed with the applicant was to keep the wall in its historic location but it would be taken down and rebuilt using the viable bricks from the surviving wall supplemented by some bricks salvaged from earlier work. This will deal with the serious problems affecting the wall particularly its dangerous lean and the general decay of the masonry caused by invasive vegetation.
- 8.05 It is unlikely that enough bricks will be salvaged to rebuild the wall to its present height and accordingly it was agreed that the wall could be rebuilt at a lower height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.
- 8.06 The works to the remainder of the boundary wall are measured and proportionate. Repairs and alterations have been carried out over the years and this is a continuation of that process which will enhance the appearance and condition of the boundary wall. The line of the boundary will be maintained
- 8.07 There is a historic glass house within the walled area. The structure is partly below ground and this part survives. All the above ground construction has been lost and there are no records of the form of the glass house. The applicant has proposed to build a lightweight structure on the historic base which will bring the

building back into use as a glass house. The new construction will sit on top of the historic fabric but none of that original material will be removed or damaged by the new work. This work will protect the historic fabric from further decay.

- 8.08 The conversion of the existing studio building will bring about some alterations to the external appearance but this is minor and it is not considered that it will cause damage to the setting of the listed building. There is some upward extension of the building which will affect the roof line but this work is contained within the valley of the existing roof and will not be visible from Mulberry and Well Cottages. There is also a proposal to replace some of the infill panels on the southwest elevation with glazing instead of solid panels. This, in heritage terms, is simply a change in material and will not impact on the setting of the listed building.

9. APPRAISAL

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.

Main Issues

- 9.01 The key issues for consideration with the application for Listed Building Consent relate to the potential heritage impacts on the curtilage listed walls and sunken glasshouse.
- 9.02 The implications of the original decision being quashed principally relate to those matters whereby some public benefit was considered to arise as a result from the residential re-use of the site, providing somewhat the justification for the works to the wall (in particular where new opening are to be created). Discussion regarding whether the residential use of the site when considered under Policy DM5 is acceptable is contained within the agenda item for 18/506662/FULL. The appraisal below is based on that scheme being found acceptable and the report remains fundamentally unchanged from the December 2020 committee report appraisal. Except where amendments have been necessary as a result of those matters discussed in Section 5.0 above. The Court of appeal judgement found no fault in relation to matters pertaining to the impact on the Listed Building.
- 9.03 In making a decision on all listed building consent applications for works, a local planning authority must have special regard to the desirability of preserving the

building, or its setting, or any features of special architectural or historic interest. This obligation, found in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and applies to all decisions concerning listed buildings.

- 9.04 Policy SP18 of the Local Plan relates to the historic environment states that the characteristics, distinctiveness, diversity and quality of heritage assets will be protected and, where possible, enhanced to ensure their continued contribution to the quality of life in the borough. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include securing the sensitive management and design of development which impacts on heritage assets and their settings.
- 9.05 Policy DM4 of the Local Plan relates to development affecting designated and nondesignated heritage assets. Applicants will be expected to ensure that new development incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting. A Heritage Assessment should respond to the value of the historic environment by assessing and taking full account of heritage assets, and their settings, which could reasonably be impacted by the proposals. The assessment should consider the significance of the assets and the scale of the impact of development on the identified significance.
- 9.06 Policy DM4 states that the council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting. The National Planning Policy Framework (paragraph 197) states: *"In determining applications, local planning authorities should take account of: a) desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) desirability of new development making positive contribution to local character and distinctiveness"*.
- 9.07 NPPF paragraph 199 advises *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*. Paragraph 200 adds *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification..."*
- 9.08 In assessing the level of harm that may occur and the planning balance NPPF paragraph 202 advises *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 9.09 Further guidance on considering the significance of heritage is provided by Historic England (Managing Significance in Decision Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017)).
- 9.10 Policy DM4 of the Local Plan states that where development is proposed for a site which includes or has the potential to include heritage assets with archaeological

interest, applicants must submit an appropriate desk-based assessment and, where necessary, a field evaluation. The application site is not in an area known to have archaeological interest. The buildings on the site are also relatively modern and their construction is likely to have destroyed anything that was present. It is for these reasons that no further archaeological information is required.

9.11 The relevant heritage considerations as part of the current works include the need to consider the potential impact on the significance of the brick garden wall (curtilage listed Grade II) and the sunken glasshouses where one of the structures is grade II curtilage listed. The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (1 of the 2 structures are curtilage listed)

9.12 The submitted heritage assessment considers the significance of the curtilage listed walls and reports the following:

- On the title map of 1840 the walled gardens are in an earlier layout with the area behind the stables (studio) building yet to be fully enclosed by new walls.
- The 1867 map shows that the gardens were still being developed and the new stable block and yard had yet to be added. The layout of the cottage garden paths was very different from today with no central path and the path close to the stable yard forward of its current position. The entrance to the garden would appear to be sited more in the corner too.
- Much of the garden development of the glasshouses and new walls are believed to date from about 1875 -88 and these appear to be present on the photograph of 1895.
- On the next photograph of 1940 glasshouses and vegetable plots show that the walled garden is largely a functional food production area. There is an access path outside the garden which helps connect the garden to the rear of the house
- In the 1950's the owner has built new wide concrete tracks to access the gardens with tractor mowers from the main house driveway. The garden is renovated by the head gardener who builds up the right hand sunken bed to match the left hand one and replaces the cold frame with a raised bed.
- In the rear garden the long raised bed can be seen in the 1960s with a much reduced vegetable crop. The importance of the garden relative to the setting of Hollingbourne House has been greatly impacted and diminished by the development and encroachment of the farm, its activities and its access road through the courtyard.
- 1975 the sale of the farm and garden cottage resulted in the closing of 4 access points to the cottage garden increasing its isolation and amenity within the overall setting of the estate. The main Hollingbourne House was listed in 1984 without any mention of the walls.
- With the location of the cottage garden to the rear of the studio building the applicant reports that current access to this residential garden is poor.
- It is reported that at the time of the applicant's purchase the neighbours boundary wall had collapsed and this has since been rebuilt, the wall behind the barn has long been collapsing and is currently propped up on timbers (see figure 10).

9.13 The heritage assessment after considering the significance of the walls advises *"...the surrounding landscape and arrangement of the walled gardens have been periodically and substantially altered since their construction. They now demonstrate numerous phases of redevelopment, with the garden walls to the west appearing to date from the construction of the previous Hollingbourne House in the seventeenth century. However, many of the walls appear to date from the late eighteenth century, with further nineteenth and twentieth century construction and intervention"* (Paragraph 3.6).

- 9.14 The wall alterations include works granted consent in August 1999 (99/1078) which involved a partial reduction in the height of garden wall to 1.2 metres and formation of new gateway.
- 9.15 Whilst the main Hollingbourne House was listed in 1984 without any mention of the walls, the council considers the walls within the garden area to the rear of the studio building to be statutorily listed due to their location in the curtilage of the grade II listed Hollingbourne House. Although in large parts not in their original form the walls have historical value in their general alignment in marking the boundaries of the walled garden and the retained bricks that the walls are constructed with.
- 9.16 The current application includes works and repairs to all of the garden walls surrounding the rear section of the application site. The applicant has advised that bricks salvaged from the proposed alterations and those retained from the 1999 alterations will be used to replace the blockwork in sealed openings or to carry out general repairs that are needed. The work will be carried out in accordance with the methodology provided at figure 12 which is submitted by the applicant.
- 9.17 The wall that runs mainly parallel to the rear of the studio building demarcated an animal yard from the walled garden and is in three different parts. The middle longer section was built at later date than the other two sections. A number of different parts of the wall have previously been rebuilt and a section lowered in accordance with a permission granted in 1999.

Figure 1 South wall curtilage lists showing existing propping



- 9.18 The proposed works to the wall are shown on the drawings below. A section of this wall was shown in the December 2020 committee report to be unstable and propped up as it is close to collapse (see Figure 1). As set out in Section 5.0 above, parts of this wall have now been removed/lowered as given the passage of time since the above photograph further weathering has meant for health and safety reasons remedial works have been necessary. This wall would be dismantled and rebuilt. The majority of the existing wall is 1.8 metres high but with an 8 metre long section (including a 2 metre wide opening) that drops down

to a height of 1.2 metres that was previously granted consent. Listed building consent for partial reduction in height of garden wall and formation of new gateway, granted on the 16 August 1999 under reference 99/1078.

Figure 2 Works to the wall at the rear of the studio building



- 9.19 The current lowered section of wall would be extended by 14 metres with two new openings formed of each 2.5 metres wide. With the many previous alterations, the value of the wall is in its alignment, the bricks used in its construction and the manner in which the original walls were constructed. With these elements protected as part of the current proposal, that will also secure the walls sustainable future, the harm to the wall is less than substantial.
- 9.20 The submitted proposals include the following works to the other garden walls:
- North west wall – likely to have been laid between 1866 and 1888 in imperial bricks with lime mortar. The wall will be repointed as joints have lost their mortar. An angled modern wall is to be removed.
 - South west wall – although line of wall appears to match the original layout, the wall appears to have been rebuilt at least twice including in recent times. Laid in imperial bricks with sand and cement the piers to the opening are a modern addition in the 1950s. The propose works are to repair the wall, clear back the ivy, replace the gate with a Yew hedge infill and add caps to the brick piers.
 - East garden wall – Wall dating from the early 1800's but has since had a range of different alterations including formation of new openings and a section of wall raised in the 1950's. A blocked up opening in the wall will be re blocked in more suitable bricks with a false door, ivy infestation removed and repointed. A leaning section may require buttressing.
 - Northern glasshouse wall – believed to date from between 1800 – 1840 with Georgian bricks in Flemish garden bond with darker bricks in a 'diaper' pattern. The line of the wall appears in 1790. Appears that the upper section of this wall may be a later addition. The works include repointing with lime mortar and replacing blown bricks, loose sections of render from the former glasshouse removed, end of wall tied in. 1950's electrical shed repaired.
- 9.21 At the northern (rear) end of the walled garden are two sunken glasshouses. The submitted information reports that the sunken glasshouses are both currently in a highly derelict state.
- 9.22 The left hand glasshouse dates from around 1879 – 1880 and is built of imperial bricks. This earlier glasshouse is curtilage listed due to the location in the original curtilage of the main Hollingbourne House and as it existed on the *1st July 1948*. The submitted proposal includes the renovation of this glasshouse include

rebuilding above ground in reclaimed red brick and new glazing. The 1950s heating equipment would be removed with the interior rendered. The door frame and door would be reinstated in a design similar to the original four panel door.

- 9.23 It is thought that the right hand glasshouse was originally a sunken frame which was built up in the 1950s using buff bricks and then rendered. This 1950's glasshouse is not curtilage listed and is not a heritage asset. The applicant has stated that the repair of the later more recent glasshouse is not economically viable so the structure will be recorded and then reduced to ground level and filled with soil. A feature outline in brick at ground level would be retained to mark its position.
- 9.24 The proposed works to the application building, including the reduction in the building footprint as part of the rebuilding of the rear part of the building. These changes and the proposed residential use of the building is make a positive contribution to the setting of the wall and glasshouse.
- 9.25 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.26 In conclusion, policy SP18 of the Local Plan states that heritage assets will be protected to ensure their continued contribution to the quality of life. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk. NPPF (paragraph 197) states: "In determining applications, local planning authorities should take account of... the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...".
- 9.27 The curtilage listed garden boundary walls have been subject of a wide range of earlier work, including repairs alterations, demolition work and rebuilding. This work has included a new opening in relation to providing a fire escape from the commercial building. The section of the wall to be rebuilt is currently unstable, propped up and in danger of collapse. In these circumstances and with reference to policy SP18 this curtilage listed wall is identified as being at risk.

Figure 3: Methodology for repair and rebuilding the garden walls

Methodology for the repair and rebuilding of sections of the garden wall and repairs to other areas of garden walling

- *Any section of wall that is need of complete rebuilding will be carefully taken down by hand. At first mortar would be remove as far as possible by a trowel or putty knife. Then bricks would be cleaned using a solution of 10 parts water and 1 part muriatic acid and a stiff brush. Industry standard personal protective equipment would be required and relevant guidance would need to be followed. Ehen bricks have been cleaned they must thoroughly be washed in clean water and stacked for re-use.*
- *Salvaged bricks would be set aside and stored for re-building*
- *Any spalded bricks would be reused where possible with the previous internal face cleaned and used as the new outer face*
- *The wall would be reconstructed using a garden wall bond with the spacing of headers and stretchers to match the existing*
- *The mortar mix of the wall would be considered and matching mortar mix used in the reconstruction*
- *Other repairs to the walls will involve repointing with the use of appropriate lime mortar mixed to match that used historically*
- *Where spalded bricks are to be removed the following will take place*
 1. *Remove the damaged brick with a suitable brick cutting tool*

2. *Clean away mortar*
3. *Either turn the brick and reuse/ or insert new or reclaimed brick into the prepared hole*
4. *Repoint with suitable mortar*
5. *Assist the carbonation of the lime mortar by covering pointed or repaired areas with hessian and mist spraying over a period of 3-4 days*

- 9.28 With the many previous alterations, the value of the walls is in their alignment that marks the boundaries of the walled garden. With further value from the bricks themselves and the manner in which the 'original' walls were constructed.
- 9.29 The current application will retain the walls on their current alignment. The reconstructed walls will be built, and repairs made with bricks that are retained from the earlier work to lower the adjacent wall and the proposed demolition. The walls will be built using a garden wall bond with the spacing of headers and stretchers to match the original wall, with a mortar mix to match the existing wall. The works will be carried out using the methodology set out at figure 3. This restoration work can be controlled through a planning condition.
- 9.30 The garden and boundary walls are now in different ownership to the listed building and separated from the listed building by the large commercial application building. The use of the garden by existing occupiers is currently restricted by this lack of direct access and as the garden walls are currently unsafe.
- 9.31 The use of the proposed building for residential use will bring the gardens back into full beneficial use. The work to restore and rebuild the walls and the new openings will ensure there is direct access from the two proposed family homes to the rear garden space and that the functional role of the walls as means of enclosure is retained.
- 9.32 With the brick wall less than 500mm away from the rear elevation of the application building the lowered section of wall will enable residential outlook to be provided to the rear windows. The lowered wall will also improve the relationship between the building and the garden space.
- 9.33 The work involving the removal and recording of the later glasshouse from the 1950s and the restoration of the later glasshouse from the 1880s as set out earlier in this report will enhance the existing historical interest in this garden area and will preserve its significance.
- 9.34 The work to the walls and the glasshouses is considered in line with SP18 with the restoration of the walls and glasshouse conserving this heritage asset and allowing the garden space to be enjoyed and used to its full potential. The proposal is in line with NPPF paragraph 197 in terms of putting the site to viable use that is consistent with its conservation. The works to repair and rebuild the curtilage listed structures and to secure their preservation is in line with paragraph 199 of the NPPF that states that great weight should be given to an asset's conservation.
- 9.35 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.36 The harm arising from the proposal relates to the new openings in the curtilage listed wall. NPPF paragraph 202 advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".

- 9.37 The curtilage listed wall at the rear of the application building is unstable and in danger of or has collapsed. Whilst it is accepted that the proposed additional openings will result in less than substantial harm to the heritage value of the wall, the benefits of providing the improved access to the rear garden and the future use of the garden that will result, will outweigh this harm.
- 9.38 After having special regard to the desirability of preserving the relevant heritage assets, their setting and any features of special architectural or historic interest the proposal is in line with policy SP18 and DM4 of the adopted Local Plan and advice in the NPPF.

PUBLIC SECTOR EQUALITY DUTY

- 9.39 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

10 CONCLUSION

- 10.01 A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.
- 10.02 The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.
- 10.03 In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).
- 10.04 The significance of the walls and historic interest are limited to the materials use, method of construction and wall alignment. The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden walls, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouses.
- 10.05 The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development. These public benefits include heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses.

11 RECOMMENDATION

GRANT listed building consent subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent.

Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls, a schedule of works to the garden walls and the sunken glasshouses shall be submitted to and approved in writing by the local planning authority.

The schedule of works shall include: a)The entire wall to be built from the bricks in the existing wall to be demolished; b)A rebuilt wall that shall be a minimum of 1.2m in height at any point; c)Full details of how the retained garden walls will be restored. d) details of the sunken glasshouse restoration. The dwellings hereby approved shall not be occupied until the approved works to the garden walls and the glasshouses have been completed, and the walls and the glasshouses shall be maintained as such thereafter.

Reason: To safeguard the value of the curtilage listed garden boundary walls and the glasshouse

3) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls a sample panel of the rebuilt wall (with the reused bricks, mortar mix/pointing details and coping stone to be used) shall be made available for inspection by Council officers with the works proceeding in accordance with this approved panel,

Reason: To safeguard the value of the garden boundary walls.

Informative

The applicant is advised that the following plans and documents were considered as part of the assessment of this application:

- 3094-011Rev F Proposed elevations (May 2020)
- Appendix 1 to the Heritage Statement (Nov 2019)
- Design and Access Statement (May 2020)
- PDL 01 A2 rev 2 Details of construction for remedial works and new openings to existing wall (May 2020)
- 3094-012 rev F proposed site plan (May 2020) 3094-012 rev F2 proposed site plan (May 2020)
- 3094-010 rev E Proposals (Proposed floorplans) (May 2020)
- PDL 01 rev v7 Proposed maintenance work to southern garden wall remaining on existing line. (May 2020)
- PDL 02 rev v2 Proposed conservation works to northern glasshouse garden wall. (May 2020)
- PDL 03 rev v5 Proposed maintenance and amendments to east garden wall. (May 2020)
- PDL 04 rev v6 Proposed maintenance and minor amendments to south western garden wall. (May 2020)
- PDL 05 rev v5 Proposed maintenance and minor amendments to north west facing garden wall by barn. (May 2020)

Planning Committee Report
20th July 2023

- PDL 07 rev v2 Proposed restoration works to sunken glasshouses. (May 2020)
- Built Heritage Statement (May 2020)

Case Officer: Rachael Elliott

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.