

APPENDIX 2

2014 APPEAL DECISION

Appeal Decisions

Inquiry held on 13-16 and 20-22 May 2014

Accompanied site visits made on 13 and 21 May 2014

Unaccompanied site visits made on 12, 15, 19 and 22 May 2014

by **John L Gray DipArch MSc Registered Architect**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 July 2014

Appeal Ref. **APP/U2235/A/13/2209693**

Baltic Wharf, St Peter's Street, Maidstone, ME16 0ST

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission (part full, part outline).
 - The appeal is made by Baltic Wharf (Maidstone) Limited, TBH 1 Limited and Maidstone Wharf Limited against Maidstone Borough Council.
 - The application, ref. MA/13/0297, is dated 20 February 2013.
 - The development proposed is: "detailed planning permission for the change of use of and alterations and additions to the existing Powerhub building to provide a mix of Class A1 (foodstore), A2 (professional and financial services), A3 (cafes and restaurants), B1 (employment) and D2 (assembly and leisure) uses; and outline planning permission, with all matters reserved except for access, for a new building for Class A1 (foodstore) use with associated car parking, and other operational development including the provision of pedestrian and vehicular access and a new riverside walkway; together with the demolition of Raglan House and other buildings and structures and demolition of part of the Powerhub building".
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Appeal Ref. **APP/U2235/E/13/2209695**

Baltic Wharf, St Peter's Street, Maidstone, ME16 0ST

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Baltic Wharf (Maidstone) Limited, TBH 1 Limited and Maidstone Wharf Limited against Maidstone Borough Council.
 - The application, ref. MA/13/0298, is dated 20 February 2013.
 - The works proposed are: 1) removal of those elements of the existing listed Powerhub building identified on drawings 3332_PL 20 and 21 and works to facilitate the refurbishment and re-use of the building; 2) public realm works and other operational development within the curtilage of the listed building; 3) demolition of Raglan House and other buildings and structures within the curtilage of the listed Powerhub building.
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Clarification

1. The development description for the planning application is reproduced in full above. The "demolition of Raglan House and other buildings and structures and demolition of part of the Powerhub building" are to be taken as part of the application for full planning permission.
2. The description of the works from the application for listed building consent is very detailed and is not reproduced in full above. The full description is set

out in Annex C below, along with comments on the need for listed building consent. It is debatable whether some of the specified works actually require listed building consent. However, uncertainty (for example, about the precise age of some of the buildings to be demolished or about the exact nature of some of the repairs to the listed building) means that the only item that can confidently be removed from the application description comes under "2) public realm works" – the new access to the site would not affect anything fixed to the listed building or forming part of the land since 1 July 1948 that is not covered by other items.

Decisions

3. Appeal Ref. APP/U2235/A/13/2209693 is allowed. Full planning permission is granted for the change of use of and alterations and additions to the existing Powerhub building to provide a mix of Class A1 (foodstore), A2 (professional and financial services), A3 (cafes and restaurants), B1 (employment) and D2 (assembly and leisure) uses, together with the demolition of Raglan House and other buildings and structures and demolition of parts of the Powerhub building; outline planning permission, with all matters reserved except for access, is granted for a new building for Class A1 (foodstore) use with associated car parking and other operational development, including the provision of pedestrian and vehicular access and a new riverside walkway; both at Baltic Wharf, St Peter's Street, Maidstone, ME16 0ST, in accordance with the terms of the application, ref. MA/13/0297, dated 20 February 2013, subject to the conditions set out at Annex D to this decision.
4. Appeal APP/U2235/E/13/2209695 is allowed. Listed building consent is granted for: 1) removal of those elements of the existing listed Powerhub building identified on drawings 3332_PL 20 and 21 and works to facilitate the refurbishment and re-use of the building; 2) other operational development within the curtilage of the listed building; 3) demolition of Raglan House and other buildings and structures within the curtilage of the listed Powerhub building; all at Baltic Wharf, St Peter's Street, Maidstone, ME16 0ST, in accordance with the terms of the application, ref. MA/13/0298, dated 20 February 2013, and the full description of the proposed works at Annex C to this decision, subject to the conditions set out at Annex D to this decision.

Main Issues

5. There is a single main issue in appeal ref. APP/U2235/E/13/2209695; it is the effect of the proposed demolitions, alterations and additions on the special architectural and historic interest of the Powerhub building, which was listed in grade II in 2012. This issue includes the principle of an extension for a foodstore to the south, based on the illustrative drawings, even though detailed proposals would require listed building consent as well as reserved matters approval.
6. There are five main issues in appeal ref. APP/U2235/A/13/2209693:
 - the viability of the proposed development, including comparison with the likely viability of other potential uses for the listed building;
 - the effect of the proposals on the special architectural and historic interest of the listed building, as for appeal ref. APP/U2235/E/13/2209695;
 - retail impact – the effect of the proposed foodstore on the strategy for future retail development within Maidstone, whether there are sequentially preferable sites for a foodstore, what effect the development might have on

- planned investment in the town centre and what effect it might have on the vitality and viability of the town centre;
- raised by local people rather than by the Borough Council or the Highway Authority, the effect of traffic generated by the proposed development, most particularly on Buckland Hill; and
 - the effect of the loss to highway improvements of the protected tree at the junction of Buckland Hill with London Road.

Reasons

7. It is appropriate to deal first with viability because, bearing in mind how the evidence to the inquiry unfolded, the conclusion on that issue will provide a context for consideration of the listed building issue (in relation to both appeals) and the retail issue. The highways issue may be considered separately; there was no objection by the Borough Council or highway authority but local people understandably held strong views on the matter.

First main issue – viability

Overall position on viability

8. There is agreement between the appellants and the Borough Council that there is no viable use for the listed Powerhub building on its own. The Council also agrees that, were there a foodstore operator in place, the proposed development would be viable. The appellants argue that there is no other viable use for the listed building as part of a development scheme for the overall appeal site. The Council disagrees, saying that residential conversion of the listed building plus new residential development elsewhere on the site could prove viable. That, therefore, is the nub of the issue.

Residential development of the appeal site

The appellants' viability appraisal

9. The appellants carried out a viability appraisal based on specific sketch schemes for conversion of the listed building and a high-density development of flats elsewhere on the site. The gross development value (GDV) of that scheme was assessed as £35.321 million and development costs as £43.954 million, leading to a loss of 19.6% on costs.
10. Conversion of the listed building contained more 3-bedroom flats than thought ideal for the likely market but was constrained by the building's structural grid. It is easy to see how a larger number of smaller flats could have been provided in the scheme but achieving that would have meant party walls at, probably, the mid-point of a large number of the structural bays. The disadvantage of so doing is that fire, noise and insulation requirements for the party walls would almost inevitably mean mullions within the structural grid compromising and undermining the visual clarity of the existing elevations. The character of the listed building would thus be harmed and it is wholly uncertain that that harm (and any other harm) might be considered outweighed by the public benefit of bringing the building back into an effective use (a balance necessarily to be made before planning permission or listed building consent could be granted).
11. The viability appraisal also ascribed a higher value to the site than was paid for the earlier acquisition of a larger area of land (part of which was subsequently sold off). There are two things to be said about that. Firstly, the land was acquired after the former owner went into administration, so the

price paid for it cannot automatically be said to be its market value. Secondly, the listed building itself may have no effective value but the parcels of land around it certainly do have market or opportunity value.

12. There has already been developer interest for housing on the north car park, an area of land readily separated from the land around the listed building. A substantial area of the sheds to the south of the listed building enjoys an open A1 use, suggesting that it would be difficult, in principle, to resist some form of retail use for the remainder or even a redevelopment opportunity for the whole of the holding. If what is considered by the appellants to be the only viable scheme for the overall land holding is refused permission, then it would be understandable if the owners of the north car park and the sheds did not pursue alternative viable options for the individual parcels. The appellants have come together on the appeal proposal because each owner would get an acceptable return; there is no reason at all why they should come together on a development scheme that was not viable. And that is a straightforward financial/commercial imperative that is bound to apply whatever relationships there may or may not be between the individual owners across the site.

The Council's viability appraisal

13. GDV in the Council's viability appraisal is £38.744 million, development costs £34.707 million – giving a profit on costs of 11.6%. The difference between profit and loss arises more from lower costs ascribed by the Council (£9.247 million less) than from the greater GDV (£3.423 million higher).
14. The first thing to be said is that 11.6% is not at all a generally acceptable profit margin. The Council itself, on advice from its consultants, uses 20% as an appropriate figure in assessing the viability of sites for allocation purposes; and, by and large, those will be sites with fewer potential constraints and cost implications than are very often seen to arise from the repair, restoration and conversion of a listed building.
15. It was said that an improving housing market could render residential use more profitable within not very many years. That is difficult to accept. Whatever improvement might arise in the housing market, and thus in the GDV of a residential scheme, a healthier economy is also likely to bring an increase in construction costs – and there would have to be a significant differential to realise an increase in profit from 11.6% to 20% (or higher, given the inherent financial caution relating to listed buildings). Moreover, the longer the building is left vacant, the more its condition is likely to deteriorate and the higher will be the costs of repair and restoration, rendering any significantly greater difference between costs and GDV highly unlikely.
16. It was also said that savings on costs as a result of fine-tuning (not by reducing specifications, which would also surely reduce sales values), could increase profitability. Some aspects of "fine-tuning" lead in the opposite direction, however.
17. In particular, the viability appraisal assumed a net:gross floorspace ratio of 80%. The ratio in the appellants' scheme is roughly 75% for the second, third and fourth floors, which are put solely to residential use. It is difficult to see how that ratio could be improved, given that access requirements would have to be very similar whatever the arrangement of flats; and it would be decreased to the extent that an appropriate ground floor entrance would require more space, as would potential restrictions on the use of the ground floor, either because of daylighting or outlook to the north or because, on the

appellants' argument, some parking would have to be provided within the shell of the building. The Council's GDV is based on a value of £2,314/sqm (£215/sqft) for the listed building, giving a gross sales value of £24.8 million. On a more realistic estimate of 75% net:gross ratio, the value would be £1.5 million less, which would reduce the profit margin to £2.5 million, or just over 7% of costs.

18. The appellants disagreed with various aspects of the Council's appraisal. The cost of acquisition of the overall appeal site was put at £4.46 million compared with the Council's £3.16 million. In fact, the site value was put at £3.725 million in the appellants' viability appraisal, a figure it is not unreasonable to use for the purposes of this analysis. Compared with the Council's £1.6 million, the market value of the retail sheds, including those presently vacant, was put at £3.2 million – a figure broadly to be preferred, for the reasons explained above. The appellants anticipated a net:gross ratio of 73%, although the comparison above is not unreasonable in assuming 75%; they also assume the use of the whole of the ground floor for parking, reducing the net sales floor area to 7,975sqm (85,844sqft), just 75% of the Council's figure of 10,735sqm (115,550sqft). The Council used a core conversion construction cost of £900/sqm (£83.50/sqft), which seems on the low side; the appellants' £1,060/sqm (£98.40/sqft) is to be preferred, especially bearing in mind the likelihood of hidden listed building repairs costs.
19. If the appellants are correct on land value, net sales floor area and construction costs, then there would be a clear loss on any residential development scheme. If the conclusion were simply that one of those elements was inappropriately assessed by the Council, then any profit would still be reduced substantially below its estimate and would render a residential scheme not viable.
20. In a sense, it is not necessary to have looked further than the net:gross ratio – because that is reasonably clear-cut and, in itself, would reduce an already tenuous profit margin to a figure unacceptable to a developer and, perhaps more importantly, a lender. There is also the question of VAT, which I have not touched upon because what might be payable would, to say the least, be open to discussion. Nor does it assist to give detailed consideration to sales values for the converted and new-build flats (the appellants assumed lower values for flats in the listed building but higher ones for the new construction).

Conclusion on viable options for development

21. It is agreed that there is no viable use for the listed building on its own. It is agreed that, with a retailer in place, the appeal scheme is viable. And it is agreed that, save for residential use, no other uses or uses for the overall site can be considered potentially viable. On the evidence, a residential scheme for the whole of the appeal site, even though it might make a small profit, cannot be considered a viable proposition, now or in the foreseeable future. Thus, the uses proposed in the appeal scheme represent, with a retailer secured, the only viable solution for the listed Powerhub building. If such a scheme were not to go ahead, either because these appeals were dismissed or because no retailer was forthcoming, then the listed building would have no viable future.
22. Nor can the owners of the overall appeal site, however closely related, be expected to wait for an indeterminate period of time on the off chance that a viable use would emerge. The appeal scheme is a viable one which, subject

to securing a retailer, would offer all of the owners an acceptable return. If it is the only viable scheme for the wider site that would secure the future of the listed building, and it is refused, then the owners of other parcels within the wider appeal site cannot be expected to do other than individually to maximise the opportunities presented by those separate parcels of land.

Second main issue – effect on the listed building

The significance of the listed building

23. The Powerhub building was listed in grade II in 2012 and benefits from a comprehensive list description. It is the former Tillings-Stevens motor vehicle factory, built in 1917 to a design by Wallis, Gilbert and Partners, in collaboration with Truscon (Trussed Concrete Steel Limited), using the Kahn Daylight System.
24. The significance of the listed building lies first and foremost in its being the earliest surviving building by Wallis, Gilbert and Partners, eminent inter-war factory architects, and one of the few surviving Daylight factories not to have undergone major change. That gives it high evidential and historical significance. Aesthetically, its significance is no more than moderate – the three façades representing the Kahn Daylight system are functional rather than visually pleasing, though notable for what English Heritage describes as the “powerful rationality” of the (then) modern approach to industrial architecture; the stripped Classicism of the west façade is more traditionally pleasing and is the earliest example of what became a recognisable style in Wallis, Gilbert and Partners’ factory designs. The communal significance of the building is also no more than moderate, primarily as a prominent feature on the River Medway with which local people can identify.

Statute, policy and case law

25. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant listed building consent or planning permission for works affecting a listed building, “special regard [should be had] to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. The National Planning Policy Framework (NPPF) urges that great weight be given to the conservation of a heritage asset when considering the impact of a development proposal on the significance of that asset.
26. The Courts have recently elaborated on both. The Court of Appeal judgement in *Barnwell Manor Wind Energy Limited v East Northamptonshire DC* was in relation to s.66 of the Act and the effect of a wind farm on the setting of a listed building. Its conclusion that a decision maker must give “considerable importance and weight” to the desirability of preserving the setting of a listed building must, however, have equal application to the preservation of “the building” or “any features of special architectural or historic interest which it possesses”. In relation to the NPPF, the judgement in *Bedford BC v SSCLG and Nuon UK Ltd* indicates that, for harm to be “substantial”, the impact on the significance of the heritage asset must be such that “very much, if not all, of the significance was drained away”.
27. The appellants accept that the appeal scheme would harm the significance of the listed building. The Council assesses that harm as “substantial”. So too did the Twentieth Century Society. English Heritage, on the other hand, assessed it as “less than substantial”, albeit just short of “substantial”. The

NPPF and the two judgements above provide the context for a consideration of the nature and scale of the harm that would be caused.

Harm to the significance of the listed building

28. The main changes brought about by the appeal scheme are the loss of north wing, the loss of the east stair/lift tower, the loss of the fifth floor, internal changes, most obviously to construct the car park ramp, and the addition of a substantial new building to south and east in replacement of the existing sheds. There is also complete re-fenestration of the north, east and south facades, which all agree would be a benefit.
29. The Council objected primarily to loss of the north wing and the east stair/lift tower. It modified its original objection to the loss of the fifth floor for a combination of three reasons: it was not part of the original design, albeit built at the same time as, or very shortly after, the main building (it was completed in 1917); visually, it did not sit that comfortably on top of the building; and its dilapidated structural condition meant that to retain it would effectively mean reconstructing it.
30. The north wing is three bays square and rises the full five storeys of the existing building. It contained the main lift for the factory and the workers' welfare facilities. The lift remains but the existence of the welfare facilities has to be deduced from the pattern of fenestration, remnants of the drainage from the toilets, indications internally of where partitions used to be and, most importantly, because it would otherwise be very difficult to draw conclusions from the physical evidence, comprehensive documentary records.
31. There is an argument for keeping the north wing as visible evidence of how the ancillary accommodation was grouped in order to keep the main floor plates clear for the manufacturing process. Replacement by what the appellants described as a "memory" of the original north wing would be little more than that – just two bays square and three storeys high, although the servicing area for the foodstore, including the lifts, would clearly be part of that "memory". The smaller volume of the proposed wing would have some benefit in enabling a clearer expression of the manufacturing floorspace in the top two storeys of the building; also, the lower floors would become visually less interrupted. In a sense, the "powerful rationality" identified in the list description would be enhanced, albeit at the loss of the original wing.
32. Loss of the east stair/lift tower would be the loss of an original feature of the building and of further evidence of how the main floor plates were kept clear of obstruction from ancillary accommodation. It is also of some visual importance because of the modelling it gives to the east façade of the building. Clearly, however, it would be difficult to retain it as part of the proposed scheme; whether the travelators between the car park and the foodstore were at the east or west side of the proposed extension, retaining the tower on the lower floors would seriously compromise an efficient plan layout. In purely visual terms, one may also consider whether, given the illustrative design for the foodstore building, a cleaner rectilinear form for the listed building would help it to retain its prominence in views from the east and also be compositionally more appropriate; it is not a very powerful argument – but it is one to be placed in the balance.
33. Looking at English Heritage's consultation response is instructive. Its main concern is that removal of original north wing and eastern stair/lift tower would be harmful to the significance of the building because it would reduce

an understanding of the flow of the manufacturing processes. That understanding, however, is fundamentally based in the documentary evidence, which enables one to understand more easily what one sees when standing in the building. If it were not for the documentary evidence, it might not be at all clear that the lift was the only part of the north wing directly related to the manufacturing process. The unobstructed floor plates, the principal feature of the Kahn Daylight System, would remain evident in the proposed scheme even if both the north wing and east stair tower were removed; the documentary evidence would continue, as it does now, to put flesh on the bones of what one can see; and, viewed from outside, removal of the north wing and east stair/lift tower might very well simplify an understanding.

34. English Heritage acknowledges that harm from the loss of columns on the ground and first floors is mitigated because the main structure is broadly (one might even say exactly) repeated on the other floors; it does, however, express concern about the loss of infill panels on the south side and the design of the supermarket extension. It does not object to the removal of Raglan House; and it recognises the potential improvements to the listed building itself, while wishing to see them legally tied to any permission. It questions whether the proposed supermarket use is the optimum viable use; the evidence to the inquiry, on the other hand, demonstrates that it is the only viable use, and hence the optimum one.
35. Accordingly, English Heritage's conclusion, which is that the high degree of harm to the significance of the listed building falls just short of substantial, cannot be said to be an unreasonable one. Moreover, if it is appropriate to give less weight to the loss of the north wing and east stair tower, then the harm must become clearly less than substantial. English Heritage does not actually object to the proposals; it simply says that the Council should only grant planning permission and listed building consent if it considers that the public benefits of the proposal outweigh the high degree of harm.
36. The Twentieth Century Society objected strongly to the loss of the north wing and fifth floor, saying that that would "interrupt" the form of the building to an unacceptable extent. It says that the loss of the fifth floor should be resisted and justification sought as to why repair, refurbishment and re-use is not possible. That justification exists: the use of a different concrete mix suggests it is not part of the original design and the condition of the fabric is such that it is effectively reconstruction, not repair, that would be needed.
37. The Society also appears more concerned than English Heritage about the nature of the illustrative supermarket extension, considering it of a scale and massing that would overwhelm the listed building. Much would depend on the detail of the design. It would be a very large extension and it would wrap around the south and east sides of the listed building, leaving only two floors visible above it from those directions. On the other hand, locating the travelators in a position overlooking the river would allow a lightweight treatment of that east-facing façade, in contrast with the visual strength of the listed building structure. The overall composition, seen from an arc to the south-east, would be very different to what one sees now; it would comprise, in essence, two relatively simple interlocking rectilinear forms, different in massing and appearance, with neither likely to dominate over the other. It might be argued that the loss of its free-standing prominence would be harmful to the character of the listed building – but, in townscape terms,

there is no reason why the design of the extension should not enable the realisation of a visually coherent whole.

38. Based on these consultation responses and its in-house expertise, the Council was perfectly entitled to come to the conclusion that the harm to the listed building would be substantial and that para. 133 of the NPPF should apply, not para. 134. Para. 132 was also prayed in aid by the appellants but, where it says that substantial harm to or loss of a grade II listed building should be exceptional, what that appears to mean is that it should only exceptionally be allowed, not that substantial harm will only exceptionally occur. On the other hand, the judgement in *Bedford BC v SSCLG and Nuon UK Ltd* accepts that, for harm to be "substantial", the impact on the significance of the heritage asset must be such that "very much, if not all, of the significance [would be] drained away".
39. The only matter raised by the Council that was not specifically touched upon by English Heritage or the Twentieth Century Society is the use of the north wing for staff welfare facilities and that placing them there enabled the main floor plates to be kept clear for the manufacturing process. As reasoned above, however, the evidence for that is primarily documentary.
40. Accordingly, the harm that would arise from the proposals must be considered "less than substantial", not "substantial", for the purposes of the NPPF. The principal features of the Kahn Daylight system would remain apparent. The "powerful rationality" of the north, east and south elevations would remain. The west façade would be unchanged, save for the removal of the set-back fifth floor. Internally, original open floor plates would be largely retained by the car park, foodstore and office uses. The proposed extension, presently only an illustrative design, need not unduly diminish the visual significance of the building, even though it would become part of a larger composition rather than remain a free-standing building. In no way can it be said that "very much, if not all," of the building's significance would be "drained away".

Loss of Raglan House and other buildings and structures

41. Raglan House enjoys a Certificate of Immunity from listing. It was built only a few years earlier than the Powerhub building and offers an interesting picture of rapidly changing styles and methods in the early part of the 20th century. It is also a substantially altered building, with a mansard addition paying little respect to the original building or even, visually, to good architectural detail. The juxtaposition of Raglan House and the Powerhub building affords a strange contrast of both scale and architectural styles; and it would become much more incongruous alongside a refurbished listed building and a new foodstore extension to its south. Given the Certificate of Immunity, listed building consent for the demolition of the building may be seen as something of a technicality, necessary only because it is attached to and within the curtilage of the listed Powerhub building.
42. None of the other buildings or structures proposed to be demolished has any special architectural or historic interest. The age of some, though it is not known, might remove them from listed building control. There is no impediment to listed building consent being granted for their demolition.

Public benefit

43. In line with para. 134 of the NPPF, the harm that would be caused is to be set against the public benefit arising from the proposals. That benefit is, very

simply, the securing of a viable and effective new use for the listed building – not just the optimum viable use but the only viable use. That itself is enough to outweigh the harm. There are two additional benefits, though. Firstly, the existing modern upvc windows, which cause so much harm to the appearance of the building, would be replaced with fenestration in the style of the original. It is true that that would be expected of any scheme for re-use – but, if there is no other viable use, the appeal scheme represents the only foreseeable opportunity to achieve that benefit. Secondly, removal of the retail sheds to the south of the listed building must represent a benefit; what would replace them would be very different but, despite the expressed concerns, careful design would surely bring significant visual improvement.

44. The appeal scheme is only viable with a foodstore retailer in place. What has to be avoided is works to the building being undertaken which would be harmful to it and then the overall scheme stalling because no retailer was prepared to come to the development. That eventuality can be prevented by a condition akin to the standard listed building consent condition that no works shall take place until a contract has been let for development for which planning permission has been granted. Such a condition would not prejudice the listed building by inhibiting any other proposal coming forward – because there is no other viable use. What it would mean is that, if no retailer came forward, no works could be undertaken and the building would remain as it is today (although the condition of a vacant and unused building is always likely to deteriorate over time, even if reasonable remedial or preventive works are being undertaken).

Conclusion on the effect on the listed building

45. The harm caused by the proposals to the significance of the listed building would be less than substantial and would be outweighed by the public benefit of putting the building to its optimum (only) viable use. That conclusion holds good only if a foodstore retailer is found to enable the project to be taken forward; hence the need for a condition to prevent harmful works being undertaken before a retailer is contractually committed.

Third main issue – retail impact

46. This is a four-stranded issue – involving the strategy for future retail development within Maidstone, the sequential test, the effect on planned investment in the town centre and, though not raised in the putative reasons for refusal, the impact on the vitality and viability of the town centre.

The Development Plan

47. The adopted Development Plan is the Maidstone Borough-Wide Local Plan 2000. Saved Policy ED2 identifies land at St Peter Street, including the appeal site, for Class B1 and B2 employment uses and, in essence, seeks to retain the land for those uses.
48. The appeal site lies within the defined town centre of Maidstone but is accepted as out-of-centre for the purposes of retail policy. That is a sensible assessment. The River Medway acts as a barrier between the site on its west bank and the primary shopping area on its east. There is a well-used pedestrian route across the river, alongside the railway line, but it is nevertheless a significant walk from the site to the nearest point of the primary shopping area, the Fremlin Walk Shopping Centre. To the south, there is a variety of retail uses on St Peter Street, with access to the primary

- shopping area in that direction being by way of the very busy Bridges Gyrotory (the only river crossing close to the town centre).
49. Amongst the aims and objectives of the Local Plan is "targeting major retail proposals into the town centre", the aim being "to regain the town centre's position as both the largest and the best central core comparison shopping area in Kent". Policy R3 identifies Maidstone town centre as a regional comparison goods centre and resists development that would undermine the strategy for, or harm the vitality and viability of, the town centre. The retail strategy was said at the inquiry to be the creation of a new retail focus at Maidstone East which would strengthen the secondary shopping area at the north end of Week Street. In the Plan itself, the proposal for bulky goods retailing at Maidstone East is identified in the section on the town centre strategy and by Policy R6 but there is no mention at all of any spin-off effect for Week Street.
50. As well as Policy R6, saved Policies R1 and R2 are relevant retail policies in these appeals. Policy R1 permits retail development within defined urban areas subject to criteria that there would be: no harm to vitality and viability; adequate access, parking and servicing; accessibility by a reasonable choice of modes of transport; and no harm to neighbouring land uses or local living conditions. Policy R2 sets three additional criteria to be met by major retail proposals: that the development would meet the requirements and trade potential of the appropriate retail sectors; that a sequential approach to siting has been undertaken; and that out-of-centre locations should be adjacent to existing out-of-centre or free-standing retail development. Parts of Policies R1 and R2 may be out of date but parts are not; in effect, however, what is not out of date is covered anyway by policy in the NPPF.
51. In addition, saved Policy T21 seeks that development such as the appeal proposal should be well related to the road network and public transport routes and provide easy and safe access for cyclists and pedestrians. There was debate at the inquiry about the relevance of this policy to the appeal scheme, addressed below in relation to the fifth main issue.

The emerging Development Plan

52. The emerging Local Plan can be given very little weight at this stage of its preparation (consultation on a Regulation 18 draft which lacks any policy to safeguard the listed Powerhub building and has prompted objections to its proposed convenience retail provision). Policy SS1 identifies the need to provide for 6,100sqm net of convenience goods floorspace and 23,700sqm net of comparison goods floorspace. Policy SP1 defines the town centre boundary. It includes the appeal site and the edge-of-centre Maidstone East / Royal Mail site. The latter is identified as the key opportunity and top priority to accommodate retail needs in the early part of the plan period and is to be allocated for up to 10,000sqm of convenience and comparison retailing. The redevelopment/extension of the Mall, within the primary shopping area, is identified as a longer-term opportunity. As presently drafted, there is no mention of the appeal site and no policy applying to it other than the general provisions of Policy SP1. There is nowhere an allocation for a large foodstore.

Strategy

53. The town centre strategy in the adopted 2000 Local Plan is clear but is now somewhat out of date. The edge-of-centre Maidstone East site is allocated for bulky goods retailing but still has not come forward. The Plan was unable to

make any effective provision for the Powerhub building, simply because it was not listed until 2012.

54. In the emerging Local Plan, the "Town centre vision" is "a regenerated and sustainable town centre", one component of which is "Enhancing the diversity of the retail offer". Policy SP1 starts with the general statement that regeneration of the town centre is a priority and then specifically provides, as two of nine identified means of achieving that, for the retail-led development of the Maidstone East / Royal Mail site and, in the medium to longer term, the promotion of a comprehensive retail development centred on The Mall. There is no provision at all for the Powerhub building, despite it being a listed building in the town centre with an existing employment use now accepted as not viable.
55. The Maidstone East site has been identified as a key development site for many years. Following an inquiry in late-2000, the Inspector noted that the site already had "a long history without having borne fruit". One constraint is that the site provides the car park for Maidstone East railway station and any redevelopment would have to provide for both station and development car parking. More recently, the adjacent Royal Mail Sorting Office site has come into the equation, although it is unlikely to become available until early 2015. It is this increase in the size of the potential development site that seems to have prompted the change from bulky goods in the adopted Local Plan to convenience and comparison retailing in the emerging Plan. The supporting text in the latter says that the combined site can accommodate 10,000sqm of convenience and comparison retailing – but it is not suggested that this should include a large foodstore. Indeed, there has been no previous policy suggestion that Maidstone East is an appropriate site for convenience retailing of any sort. That said, the appellants' Retail Assessment, dated February 2013, recognises the potential for a foodstore to come forward as part of the comprehensive redevelopment of the Maidstone East / Royal Mail site.
56. Notwithstanding that anticipation by the appellants, there would be no harm to the adopted retail strategy for Maidstone town centre, which is anyway out of date. Any harm to the emerging strategy is to what can be found in the consultation draft of the Local Plan; that carries little weight at this stage, is the subject of objection and proposes convenience and comparison retailing on an edge-of-centre site not hitherto considered for convenience retailing.
57. The evidence base for the emerging policy is to be found primarily in the Town Centre Study of 2010, the DTZ Retail Capacity Study of 2013 and the subsequent DTZ Town Centre Assessment.
58. The Town Centre Study, contrary to the adopted Local Plan, notes in its property market review that the Maidstone East site "is most likely to be suitable for a large convenience retailer" but that other proposals could bring it "into consideration for some comparison retail element"; it is identified as a key development opportunity. The Study also identifies the western riverside as an opportunity site, with the Powerhub building as a "new active frontage". It considers that the area at the foot of Buckland Hill represents "an important opportunity to revitalise a highly accessible part of the western riverside" and that "regeneration of the Powerhub building has provided an important employment opportunity", deeming the existing activities to be "appropriate in the medium term". In short, the potential of Maidstone East for convenience retailing is identified but the Study pre-dates the listing of the

Powerhub building and the acceptance, now, that the employment activities then thought successful are no longer viable.

59. In broad terms, the Retail Capacity Study considers quantitative need and assumes that the pattern of market shares remains unchanged. That is not necessarily a shortcoming – because it provides a basis from which other scenarios can be considered. The Study identifies capacity for 6,100sqm net of additional convenience floorspace in the period to 2031. That is the figure used the emerging Plan but, given the nature of the Study, it is probably wrong to consider it an absolute maximum.
60. The Town Centre Assessment looks more towards enhancing Maidstone's comparison goods offer and is all but silent on convenience provision. It may be as important for what it does not say as what it does – it does not recommend allocating any site for a large foodstore, nor does it suggest that the Maidstone East / Royal Mail site is the only, or most appropriate, location for such a development.
61. Of course, the Council must draw its own conclusions from the evidence base it has commissioned in preparing its Local Plan. As suggested above, though, one might perceive an imbalance between the pursuit of development, including convenience retailing, on the Maidstone East / Royal Mail site and the policy vacuum surrounding the listed Powerhub building. That is not to say that the course being followed by the Council is wrong – but it does indicate why little weight can be given to the emerging Local Plan, and its town centre retail strategy, at this stage in the preparation process.

The sequential test

62. The reason for the proposal for a foodstore is because, given a retailer willing to come to the appeal site, it represents the only viable development option for the listed Powerhub building. The judgements in *Tesco Stores Limited v Dundee City Council* and *R v North Lincolnshire Council and Simons Developments Limited* make it clear that what is to be considered is the suitability of other sites to accommodate the proposal at issue. In this case, the proposal is a combination of uses driven by the needs of a grade II listed building. It is locationally specific. Placing a foodstore development elsewhere in Maidstone cannot resolve the needs of the listed building; because of that, no other site can be suitable for the proposed development.
63. To that extent, there is no purpose to be served by looking to see if there are other sites suitable for a foodstore in sequentially preferable locations in Maidstone. Nevertheless, if one is looking at retail policy in isolation, there is an argument for looking at the sites suggested by the Council to see whether, if only in theory, they would be capable of accommodating a foodstore of broadly the size proposed in the appeal scheme. The only two sites that really need to be considered are Len House and Maidstone East.

Len House

64. Len House is a grade II listed building close to the centre of Maidstone. It may be considered as an edge-of-centre site, given its relationship to the primary shopping area. It is in use as a sales and servicing franchise of PSA Peugeot Citroen.
65. First of all, Len House cannot be said to be available. Peugeot Citroen is considering its options, which include development of a new site elsewhere in the wider area, closing the existing franchise and giving it to an existing car

dealership in the wider area or, crucially, retaining the dealership within part of the existing premises. There is no date for a decision – it could be at any time during the period of the emerging Local Plan. There is complete uncertainty about how much land might become available or when. Indeed, there is no assertion that the existing use is not viable.

66. A feasibility study was carried out in 2010 to examine the possibilities of retaining part of the building and developing the remainder of the land and building for a supermarket. Waitrose was the retailer involved at that stage. The net sales area on the drawings is around 1,800sqm, less than half the size of the appeal scheme. That in itself is enough to render the site unsuitable for the proposed development.
67. Even then, there are potential problems with the sketch proposals. There is no ground floor back-of-house space, nor any customer facilities; all storage would be at first floor level, meaning goods would have to be lifted on arrival and lifted down again when needed in the sales area; there would have to be a three-storey car park immediately adjacent to the listed building; how service and customer access would work is difficult to divine; and there would have to be significant intervention in the listed building, the details of which cannot be known. In short, it cannot be certain that planning permission and listed building consent would be forthcoming for a supermarket proposal, or that the constraints of the site would not actually deter a food retailer.

Maidstone East

68. It is only recently, indeed subsequent to the appeal on this case being lodged, that the potential for some form of convenience retailing on Maidstone East has emerged in the form of a draft policy. Representations by Network Rail and Solum Regeneration in relation to the now refused Springfield Park application suggest confidence that the Royal Mail site will become available in 2015. Solum anticipated an outline planning application by the end of May 2014 – none had materialised by the close of the inquiry on 22 May although, at the time of writing this decision, an application has been submitted. It also said in the representations that acquisition of the Royal Mail site is key to delivering a development that would include a new supermarket, substantial non-food retail and a new station with station car parking.
69. That is a complex scheme and, given the failure to bring forward the Maidstone East site on its own over fifteen years and more, one is entitled to wonder how quickly development of the larger site might take to emerge. Moreover, setting that doubt to one side, it would seem wrong, until the role of the Maidstone East / Royal Mail site is properly determined through the development plan process, to consider it as either available or suitable for the size of foodstore proposed on the appeal site.

Conclusion on the sequential test

70. The fact that the appeal scheme is site-specific, to enable the preservation of the listed Powerhub building in a viable new use, seriously limits the value of considering the suitability of sites that might, in purely retail terms, be sequentially preferable; development on another site could not achieve what is intended by the appeal scheme. Notwithstanding that, neither of the two sites said to be sequentially preferable is suitable. Len House is not available, not suitable for the size of development proposed and possibly not viable; the Maidstone East / Royal Mail site, while it might be suitable and viable for the size of foodstore proposed, cannot be considered available.

Effect on planned investment

71. There is no planned investment in the town centre that would be adversely affected by a foodstore development on the appeal site. The Council's concern is about investment in the Maidstone East / Royal Mail site, which is edge-of-centre, meaning that, when a proposal comes forward, it will have to be accompanied by a sequential assessment and an impact appraisal. Either policy in the NPPF relating to impact on planned investment does not apply to the Maidstone East / Royal Mail site because it is not in the centre, or, if "centre" in para. 26 means the town centre, not the primary shopping area, then there is no difference in status between that site and the appeal site (either locationally or, broadly, in the timing of investment proposals).
72. In any event, if there were any planned investment in a convenience retail development on Maidstone East (based on the recently submitted application), it is not supported by adopted Development Plan policy, which allocates the site for comparison retailing. Nor is there a suggestion from the potential developer that a scheme including convenience retailing would not happen if planning permission were granted on the appeal site (the representations on the Springfield Park proposal said no more than that that development would "reduce the appetite of other food retailers and ... could undermine the ability to deliver" development on Maidstone East"). That is hardly a trenchant objection.

Effect on vitality and viability

73. Adverse impact on the vitality and viability of the town centre was not part of any of the putative reasons for refusal but was introduced in evidence to the inquiry. That probably stemmed from on my own note *in lieu* of a pre-inquiry meeting (based on an unavoidably limited knowledge of the proposal at that time) which wondered about the cumulative impact on the town centre of two foodstores (on the appeal site and at Maidstone East).
74. The proposed foodstore on its own would not have any adverse impact. There was, at the time of the inquiry, no firm proposal for the Maidstone East / Royal Mail site, although the recently submitted application includes a foodstore. Even if there were to be one, as well as at the appeal site, the cumulative impact associated with the two stores would not be significantly adverse. On the Council's evidence, about which the appellants registered certain concerns, the impact on the town centre from a new food/non-food superstore on Maidstone East would be 13.9% on convenience sales, 1.4% on comparison sales and 2.9% on all sales; the cumulative impact from superstores on both Maidstone East and the appeal site would be 27% on convenience sale, 2.4% on comparison sales and 5.4% on all sales. The only figure that might cause concern is the cumulative impact on convenience sales – but that must be treated with caution.
75. Firstly, the figure assumes that both foodstores would be open by 2016 and have established their trading patterns by 2018, which seems unlikely. The application for the Maidstone East / Royal Mail site has only recently been submitted and development on the appeal site could not go ahead (could not even be designed) until a retailer had been secured. Even if one foodstore were established by 2018, cumulative impact could only be properly assessed from the time when both were established.
76. Secondly, the figures do not seem to allow for any trade draw from one to the other. If, say, a foodstore on Maidstone East were established by 2018, with

a 13.9% impact on the town centre, one would not expect a foodstore on the appeal site then to have a further 13.1% impact, because a proportion of its trade would be drawn from the edge-of-centre Maidstone East foodstore. Added to that, the sales density assumed for the appeal site seems high when it would be, in effect, in competition with Maidstone East. That applies also to the comparison sales impact; if the impact of a superstore at Maidstone East would be 2.9%, then one cannot expect the additional impact of the appeal scheme, with a much smaller area for comparison sales, to be 2.4%.

77. Thirdly, the Council's figures show that the Maidstone town centre convenience sector is trading well above benchmark levels, which means that the simple percentage impact figure, whatever it might actually be, would be unlikely to reduce the turnover of any town centre store to unsustainable levels, or even to below average levels for that retailer. This applies particularly to the town centre Sainsbury's store, on which the greater part of the impact would fall.
78. Lastly, 2000 Local Plan is clear that it is Maidstone's position as a comparison shopping destination that is to be maintained, indeed enhanced. That remains true in 2014, albeit that the emerging Local Plan is less specific in its terms. On that basis, greater regard should be had to the overall impact, which is estimated, almost certainly too highly, at 5.4%.

Conclusion on retail impact

79. There would be no harm to the adopted retail strategy for Maidstone town centre, which is anyway out of date. The emerging strategy cannot carry significant weight at this stage; in particular, the emerging Local Plan is the subject of objection and proposes convenience and comparison retailing on an edge-of-centre site (Maidstone East) which has not hitherto been considered, in policy terms, for convenience retailing.
80. There is no sequentially preferable site suitable for the proposal because it is a site-specific proposal, intended to secure the preservation and effective use of the listed Powerhub building. Even in purely retail terms, however, Len House is neither available nor suitable and Maidstone East cannot be considered available.
81. There is no planned investment in the town centre that would be adversely affected by the appeal proposal. Even if the Maidstone East / Royal Mail site were to be taken into account, its status as a site within the defined town centre is no different to that of the appeal site and, purely in the terms of para. 26 of the NPPF, the impact from development of either one on investment in the other is not to be seen as objectionable.
82. Lastly, there would be no significantly adverse impact on the vitality and viability of the town centre. While the cumulative impact on convenience sales from two foodstores would be fairly high, it has to be set against the fact that the town centre convenience sector is trading well. The cumulative impact of two stores on combined convenience and comparison sales in the town centre would be very modest.

Fourth main issue – highways matters

83. There was no highways or transportation objection to the application from either the Borough Council or the Highway Authority. Not only that, the Highway Authority wrote to give its support to the highways rebuttal evidence produced by the appellants. That must mean, although it was still raised

- several times, that there is no objection in relation to saved Local Plan Policy T21. Very simply, it is a policy in the Transportation chapter of the Local Plan and there is no transportation objection.
84. The objections raised by local people are understandable. I made sure that all of the points raised were responded to by the appellants' highways witness. Some of them were of concern to me as well. Commendably straightforward answers were provided to all of my questions. In the end, nothing in the representations and nothing I saw on my various visits to the appeal site, Buckland Hill and St Peter Street can persuade me that the Highway Authority was wrong to take the unambiguous stance that it did.
85. The proposed foodstore would obviously generate a significant amount of additional traffic and, with the catchment area being primarily to the west of the Medway, a considerable proportion of that traffic would be likely to use Buckland Hill. It must be remembered, though, that the Powerhub building is presently vacant and any use of it, including a resumption of its lawful use, would generate additional traffic. There is also the traffic generated by the retail sheds on the south side of the Powerhub building, which would cease if the appeal scheme went ahead. What is to be assessed, therefore, is the relative increase in traffic flows, not the absolute increase.
86. Automatic traffic count (ATC) data for Buckland Hill, undertaken close to the railway station in March 2013, showed an average of 447 and 412 two-way movements in the morning and evening weekday peak hours respectively; the Transport Assessment (TA) for the application recorded flows at the London Road end of Buckland Hill of 430 and 490 respectively. Those figures can be taken as indicative of the general range of peak hour flows. Saturday figures were a little higher throughout the day.
87. More specifically, the evidence to the inquiry was that the development would add 148 movements to the existing westbound evening peak hour flows of 228 east of Buckland Road and 263 west of it. Eastbound development traffic would be very much less because trips at that time of day would largely be 'on the way home' and thus much more likely to be along St Peter's Street from the Bridges Gyratory. Increases of 66% and 56% may sound dramatic but, numerically, there would be an average of some 6 or 7 westbound movements/minute compared with either side of 4 at present – neither is particularly high. In the Saturday peak hour, the development would add 103 westbound movements to 291 east of Buckland Road and 477 west of it (so a significant amount of traffic obviously uses Buckland Road rather than St Peter's Street and Buckland Hill); the percentage increases are 35% and 22% respectively but the actual numbers are again relatively low.
88. In response to my query about school hours, the 08:00-09:00 base flow is 435 movements to which the proposed development would add 54; between 15:00 and 16:00, the base flow is 470 and would be increased by 155, meaning just over 10 movements/minute compared with just under 8 at present – not a substantial difference in terms of either highway or environmental capacity.
89. The proposed road widening would be over some 60-65m of Buckland Hill, to enable left and right turn lanes at the traffic lights. Only four on-street parking places would be lost, not unacceptable given the relatively few cars parked there when I was in Buckland Hill on weekdays. Widening would not cause the footway to be narrowed to any inappropriate extent. I realise that

Buckland Hill is used by large numbers of school children but the footways on either side of the road are not narrow (although there is a length of road with no footway on its southern side) and, despite what was said at the inquiry, it is notable that all but one of the submitted photographs show the children staying on the footway, except when actually crossing the road. The information provided to the inquiry was that the development would bring an increase in traffic of about 12% in the morning peak hour, which would barely be noticeable, and about 33% between 15:00 and 16:00, when children were returning home. The afternoon increase can be represented as an average of fewer than eleven vehicles/minute compared with fewer than eight vehicles/minute at present, an increase that would not make conditions in Buckland Hill significantly poorer than they are now.

90. At the Bridges Gyratory, the cycle lane and footway would taper at the St Peter Street entry to give a narrowed pedestrian/cycle path over the bridge itself. That would enable a fourth traffic lane on the bridge while still leaving ample width for a dual-purpose cycle and pedestrian path – and, of course, the widened carriageway would help to reduce congestion on the bridge and enable easier egress from St Peter Street.
91. The existing weight restriction on Buckland Hill is not adequately signposted; the sign at the London Road junction is not easily seen and there seems to be no sign at the foot of the hill. It is no wonder that HGVs regularly use the road. The proposed mini-roundabout, providing access to the appeal site, should enable proper signposting to stop HGVs travelling up Buckland Hill. Advance warning to the north on London Road would, if that were appropriate, also make the weight restriction clearer.
92. The photographs submitted by the objectors are inevitably (and literally) 'snapshots in time' but they suggest an unexpected level of congestion. Some of the congestion in St Peter's Street is from vehicles waiting to enter existing retail outlets. And some of that in Buckland Hill is due to HGVs wrongly using the road. The improvements at the Bridges Gyratory and at the London Road traffic lights should ease flows in both St Peter's Street and Buckland Hill, even allowing for the additional traffic generated by the foodstore.
93. That said, it is clear that parked cars on Buckland Hill tend to obstruct the two-way flow of traffic. The dimensions provided to the inquiry confirm that the parking bay markings generally leave a clear carriageway width of no more than about 3.8m. That might be seen favourably as acting to slow traffic; on the other hand, it appears that parking could be restricted to one side of the road only – but that would raise the question of whether the resulting free flow was a good or bad thing.

Fifth main issue – the protected tree

94. The horse chestnut tree in the south-east angle of the junction of Buckland Hill with London Road was made the subject of a tree preservation order specifically because of the threat of felling for a junction improvement associated with the application now subject of this appeal. It stands in the footway, close to both carriageways. There is no proposal for a replacement tree in the appeal scheme; indeed, it would not be possible to do so with a tree of similar ultimate size anywhere near the same location. Put simply, therefore, what has to be assessed is the contribution of the tree to the character of the street scenes and what harm would arise from removing that contribution.

95. Contrary to the suggestion in the appellants' written evidence, loss of the tree would be a 'direct effect' of the development proposed, not an 'indirect effect'; the junction improvements are specifically required if the development is to be acceptable and the loss of the tree is a direct consequence of those improvements. In truth, however, that makes no real difference to the assessment to be carried out. Nor is the quality of the townscape setting a telling factor – a setting of nationally recognised significance might lend greater weight to the desirability of retaining a tree but a moderate setting cannot automatically diminish the weight to be given to a tree's contribution.
96. The tree itself is not in prime condition. There is an old wound on the south-west face of the trunk, at a height of about 2.5m, where a substantial bough has previously been removed. Whether or not related, the bough immediately above that is decaying and probably needs to be removed, which would reduce the aesthetic, or amenity, value of the tree. The indication that the tree has a life expectancy of 10-20 years seems a reasonable one.
97. While the tree is obviously in a prominent location, it is not always prominent in views approaching the junction from the four possible directions. From the carriageway of Somerfield Road, the tree only really comes into view some 30m from the junction, a little further away from the northerly footway. From Buckland Hill, it is partially obscured by the lime just to its east, becoming more prominent only as one gets to about 30m from the junction (somewhat more from the northerly footway). Approaching from the south along London Road, it is really only that part of the tree's canopy oversailing the carriageway that is visible before one gets to around 40m from the junction. The absence of intervening overhanging trees means it is visible over a longer distance when approaching from the north along London Road, especially from the westerly footway.
98. In general terms, therefore, while the tree does contribute to the continuity of greenery in all directions, its individual impact is appreciated much more from close quarters than from afar. There would be a significant change in the street scene if it were removed – but, save for the approach from the north, one that would not really be noticeable until within 30-40m of the junction. Other nearby trees, beyond as well closer, would diminish the impact of the loss because there would still be a substantial amount of vegetation in all views. All told, while felling the tree might be regrettable, the harm from doing so would not be nearly so great as to warrant refusal of a development proposal that was otherwise acceptable.
99. I have deliberately avoided assessing the loss of the tree in the terms of a Landscape and Visual Impact Assessment (LVIA), because of the danger of applying, or being thought to apply, a 'tick-box' approach. LVIA is a valuable assessment tool but has to be used with sensitivity and judgement. In broad terms, I agree with the assessment put forward by the appellants – I have simply expressed my views differently. Where I specifically disagree with the appellants' representations is in bracketing the loss of the tree with the landscape or townscape benefits seen as arising from the proposal as a whole. The loss of the horse chestnut as a result of highway improvements to Buckland Hill is sufficiently removed from the appeal site as to warrant an assessment on its own merits.
100. It was suggested (and was also a matter I raised myself) that the lime tree several metres to the east in Buckland Hill would also have to be removed in

order to gain adequate footway width on the south side of the widened carriageway. The response was that, subject to removing the sucker growth, there would be a minimum clear width of footway of 1.4m. That assumed a carriageway of three lanes each 3.0m wide when, especially given the weight restriction on Buckland Hill, the lanes approaching the junction could perhaps be slightly narrower. It also has to be remembered that the footway would be narrowed only by the tree trunk itself and that 1.4m would be an adequate width for the majority of purposes. In short, there would be no need for the lime tree to be felled and detailed junction design, which would be to the requirements of the highway authority, could well leave a wider footway past the tree than the 1.4m being considered at the inquiry.

101. One image submitted to the inquiry showed not only the horse chestnut and the lime removed but also the (multi-stemmed) tree in the garden on the north side of Buckland Hill. No additional land is proposed to be taken for the highway works and there would be no threat to that tree. Accordingly, the image is a misrepresentation. There was also discussion about the existing tree pits further east on the south side of Buckland Hill. Their size and nature reduces the effective width of the footway but there is no doubt that a different design could bring a significant improvement.

Obligation

102. The executed unilateral obligation provides for bus link between the town centre and the foodstore, a riverside footpath and highways improvements subject to a section 278 agreement with Kent County Council as Highway Authority. The highways works comprise, in essence, a mini-roundabout at the junction of St Peter's Street and Buckland Hill to provide access to the appeal site, widening of Buckland Hill to provide two lanes at the traffic light junction with London Road and widening to four lanes of the eastbound carriageway of the Bridges Gyratory. These works are necessary in order that the proposed development does not put unacceptable strain on the highway network. The bus link is necessary to afford the option of visiting the foodstore without having to walk too far; it would operate for up to five years subject to annual review. The footpath might be thought desirable rather than necessary but is actually an opportunity not to be missed to achieve another segment of what would eventually become a continuous riverside path on the west bank of the Medway.
103. With one exception, the Council is satisfied with the provisions in the obligation. It thought that release from the obligation for the bus link should be only if there were an alternative service free of charge; however, if an operator wished to provide a suitable service between the town centre and the site (and beyond in either direction), then it would be inappropriate that there should be a free service to compete with it.
104. All of the provisions in the executed obligation can be considered necessary to make the proposed development acceptable in planning terms, directly related to the development and also fairly and reasonably related to it in scale and kind.

Conditions

105. Suggested conditions were submitted before the inquiry opened and I circulated my comments on them. That led to a revised list which was then updated and the subject of discussion on the final day of the inquiry.

106. Suggested condition 2 for listed building consent sets out various exclusions from the commencement of the works. There is no problem in excluding the Norton Electrical building and any walls related to it (it has no architectural or historic interest) or with the removal of the later steel framework attached to the Powerhub building and Raglan House, subject to any necessary making good to the listed building. It seems inappropriate, however, to exclude the fifth floor of the listed building; the reason for seeking the exclusion relates to its poor structural condition – but s.9(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990 Act affords a defence for undertaking works in contravention of a condition attached to listed building consent.
107. Otherwise, the suggested listed building consent conditions, to control the junctions between existing and new construction, the style and detail of the new fenestration and the detail of repairs to the existing structure, to secure an appropriate record of the building and to ensure that a binding contract for the whole of the development is in place are all both necessary and reasonable. To them should be added conditions for the treatment of the existing structure which will become exposed after removal of the north wing and to ensure that any works of making good are carried out using materials and methods to match the existing. A condition to identify the drawings on which consent is granted is also appropriate.
108. In relation to planning permission, a condition similar to that suggested for listed building consent seeks to exclude certain work from the definition of commencement. Enabling demolition consistent with listed building consent can reasonably be permitted, as can ground investigation and on-site survey work. Enabling the other options seems either unnecessary or potentially harmful. Boundary fencing and hoardings, archaeological investigation, decontamination and temporary buildings/works are covered by other conditions while the laying of services must be geared to the actual development); and, in the case of works below ground level, that is such an imprecise term that there is scope for more harm than might at first appear.
109. Otherwise, and in addition to reserved matters and related conditions, and the identification of the approved drawings, conditions (nos. 6-24 and 27-33) are necessary and reasonable. Control over materials, site and floor slab levels, roof plant and equipment, external lighting, hard and soft landscaping, decontamination and foul and surface water drainage is necessary to ensure an acceptable quality in the various aspects of design and appearance. Control over floor areas for the retail unit ensures that the development remains consistent with the above reasoning, as does the prevention of subdivision. The provision and completion of off-site highways works, access, servicing, car parking, car park management and cycle parking/storage before first occupation is necessary to achieve appropriate accessibility. A construction management/methodology conditions is needed to ensure that appropriate standards are maintained throughout the course of development. And, lastly, the prevention of delivery vehicle parking on St Peter Street ensures that all deliveries are made within the service yard.
110. On opening hours, the car park is sufficiently close to the Scotney Court residential development that maintaining appropriate residential amenity suggests trading hours be restricted to 07:00-22:00 on weekdays and Saturdays. For deliveries, however, the service area is located between the listed building and the railway embankment with no residential properties close by; there is no reason for a restriction on delivery hours.

111. On the condition to secure a travel plan (20), the Council would prefer a green travel plan. The condition specifically identifies an employees travel plan (or perhaps plans), tailored to each part of the development. It is very difficult to see how a plan could be thrown wider than employees, since customers would be wholly beyond the control of the owners or operators of the development.
112. On archaeology (condition 25), the assessment accompanying the applications concluded that the proposed development would have a negligible impact on archaeological remains; the County Council accepted the assessment as reasonable and concluded that "some level" of archaeological work would be appropriate; in the circumstances, a 'watching brief' condition would be sufficient. The condition (26) on securing a sustainable and energy-efficient form of development is unacceptably imprecise; it is understood that that arises from the potential difficulty in securing what is hoped for in the listed building; the only precise option is to require a BREEAM Very Good rating in the new building subject of outline planning permission and to leave assessment of the listed building to be gauged from the details of the work to be done to it. On air quality, the assessment accompanying the applications concluded that the proposed development would have a negligible impact; the suggested condition (34) can be omitted as it is unacceptably imprecise and what the consultation response seeks can anyway be secured through other conditions.
113. Lastly, a condition to prevent works being undertaken before a contract has been let for the wider development is reasonably to be attached to planning permission as well as listed building consent.
114. I shall amend the wording of most of the suggested conditions in line with the models retained from Circular 11/95, the guidance in the NPPF or for greater concision, precision or clarity.

Overall conclusion

115. The conclusions on the five main issues can be summed up very simply. The proposed development represents the only viable solution to bring the listed Powerhub building into an effective and viable use. The harm to the significance of the listed building caused by the proposed development would be less than substantial. The public benefit of putting the building to its optimum (only) viable use is enough in itself to outweigh that harm. No harm would arise in retail terms – whether to the retail strategy for Maidstone town centre, to planned investment in it or to its vitality and viability; and there are no sequentially preferable sites in or on the edge of the town centre, primarily because the appeal proposal is specific to the listed building but also because there is no other site that is available. There is nothing to suggest that the Highway Authority was wrong in emphasising that it saw no objection at all to the proposed development. And lastly, the harm caused by the loss of the protected horse chestnut at the London Road / Buckland Hill junction is far from sufficient to prompt refusal of an otherwise acceptable scheme.
116. Accordingly, the appeals may be allowed, subject to the provisions contained in the section 106 obligation and conditions, as considered above, attached to both planning permission and listed building consent.

John L Gray

Inspector

ANNEX A APPEARANCES

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FOR THE APPELLANTS

Russell Harris QC

instructed by Cliff Thurlow, Baltic Wharf (Maidstone) Limited, Court Lodge Park, Lower Road, West Farleigh, Kent, ME15 0PD.

He called

Lakis Pavlou BSc(Hons) MRICS
Clive White BSc(Hons)
DipArch(Dist) RIBA

Director, GVA Grimley Limited.
Consultant, Chetwoods Architects.

Joanna Burton MPhil(Cantab)
BA(Hons) IHBC

Consultant, Beacon Planning Limited.

Michael Mason CMILT MCIT
MIHT

Technical Director, Russell Giles Partnership.

Chris Goddard BA(Hons) BPI
MRTPI MRICS

Partner, DP9.

FOR PEUGEOT CITROEN

Peter Dines MRTPI MRICS

instructed by PSA Peugeot Citroen, Pinley House, 2 Sunbeam Way, Coventry, CV3 1ND.

He called

Anthony Horton BSc MRICS

Partner, dpa² LLP.

INTERESTED PERSONS

Amanda Allen
Stuart Jeffery
Cllr David Pickett
Dilip Rai
Uta Critchley

Local resident.
Local resident.
Councillor for Bridge Ward.
Owner of the convenience store at Buckland Hill.
Local resident.

ANNEX B DOCUMENTS

Core Documents

- CD.X List of Core Documents dated 21 May 2014.
CD1- All documents listed in Document CD.X.
CD94

Maidstone Borough Council Documents

- MBC1 Michael Parkinson's proof of evidence.
MBC2 Nicholas Lambert's proof of evidence.
AMBC2 Appendices to Nicholas Lambert's proof of evidence.
MBC3 Jonathon Baldock's proof of evidence.
AMBC3 Appendices to Jonathon Baldock's proof of evidence.
MBC4 Written statement by Nicholas Galvin, Landscape Officer.
MBC5 Suggested conditions, updated 21 May 2014.

Appellants' Documents

- BWLP1 Chris Goddard's evidence:
A – proof of evidence; B – appendices; C – rebuttal proof of evidence.
BWLP2 Joanna Burton's evidence:
A – proof of evidence with appendices; B – rebuttal proof of evidence.
BWLP4 Lakis Pavlou's evidence:
A – proof of evidence with appendices; B – 1st rebuttal proof of evidence; C – 2nd rebuttal proof of evidence; D – table of differences between GVA and DTZ.
BWLP6 Clive White's illustrated proof of evidence.
BWLP7 Michael Mason's evidence:
A – statement of evidence (Appendix 2 in BWLP1-B); B – rebuttal proof of evidence; C – supplementary statement; D – additional information; E – extract from Manual for Streets.
BWLP8 *R v North Lincolnshire Council and Simons Developments Limited*, [2012] EWHC 3708 (Admin).
BWLP9 Environment Agency's consultation response and subsequent email correspondence.
BWLP10 Executed unilateral obligation with accompanying Natwest power of attorney document.

Other Inquiry Documents

- I.1 Anthony Horton's statement of evidence.
I.2 Anthony Horton's supplementary statement of evidence.
I.3 Amanda Allen's statement, with photographs.
I.4 Stuart Jeffery's statement.
I.5 Cllr David Pickett's statement.
I.6 Dilip Rai's statement.
I.7 Letter from Uta Critchley.
I.8 Two emails, one with photographs attached, from Amanda Allen.
I.9 Photographs submitted by Brian Critchley.
I.10 Emails confirming 37 signatures to an online petition against the proposals.

ANNEX C FULL DESCRIPTION OF LISTED BUILDING CONSENT WORKS

- 1) Removal of those elements of the existing Powerhub building identified on drawings 3332_PL 20 and 21 and works to facilitate the refurbishment and re-use of the building, including:
 - removal of the north wing followed by its reconstruction in a reconfigured format with service lift to create access and space for the foodstore service yard;
 - removal of the stairwell and lift shaft on the east elevation (riverside);
 - removal of the electrical switchgear building attached to the north side of the Powerhub building to create space for the service yard;
 - removal of the central south wing (lift shaft);
 - reconfiguration of the interior of the building by removing existing walls to create open areas for car parking and space for A1, A2, A3, B1 and D2 uses;
 - removal of the fifth floor and lift tower;
 - refurbishment of the existing flat roof to resolve problems of water penetration;
 - repairs to the concrete frame and cills to remedy problems of spalling concrete and the effects of weathering;^A
 - repair of the St Peter's Street façade;^B
 - re-fenestration;
 - construction within the building of vehicular and pedestrian access, including stairwells, lifts and ramps, by removal of floor sections;
 - addition of a circulation core to the rear of the west façade; and
 - removal of infill panels on the south and east elevations to create access through to the new extension.^C

- 2) Public realm works and other operational development within the curtilage of the listed building, as follows:
 - construction across the river frontage of a new footpath for public access;^D
 - new access to the site from a mini-roundabout on the St Peter's Street / Buckland Hill junction, including reconfiguration of footways on the public highway.^E

- 3) Demolition of Raglan House,^F which is subject to a Certificate of Immunity from Listing, and other buildings and structures within the curtilage of the listed building, all as shown on drawing 3332_PL 20, as follows:
 - free-standing two-storey building to the north of the Powerhub building;^G
 - sheds on the south and east sides of the Powerhub building;
 - free-standing single-storey structures in the north car park;^H and
 - the removal of existing structures forming parts of the riverside moorings.^J

Inspector's notes

- A Like-for-like repairs would not normally require listed building consent but the extent of the works is likely to be more invasive than the normal run of repairs, meaning that to have sought consent is appropriate.
- B. There is no specific description of the works so, as with A, to have sought consent is appropriate.

- C. The detail of this element of the works cannot be known until the design of the proposed foodstore extension is undertaken. That would be the subject of future reserved matters and listed building consent applications. It is appropriate, nevertheless, to seek to establish at this stage the principle of works to provide the necessary access.
- D. All of the land is within the appeal site but it appears that not all is within the curtilage of the listed building. Also, listed building consent is not required for works which would not be attached to or require alteration of a listed building or any object or structure fixed to it. In this case, there is sufficient doubt to make it appropriate to have sought consent.
- E. None of the proposed works, even those within its curtilage, would involve alteration of or attachment to the listed building. There is no requirement for listed building consent.
- F. Although it is structurally free-standing and enjoys a Certificate of Immunity from Listing, the building is attached and within the curtilage of the listed Powerhub building; it is thus appropriate to have sought listed building consent for its demolition.
- G. It is unclear whether the building existed before 1 July 1948; as it may have done, it is appropriate to have sought listed building consent for its removal.
- H. It is much more likely that these buildings were erected after 1 July 1948; even so, as long as there is doubt, it is appropriate to have sought listed building consent for their removal.
- J. The question is whether these structures are within the curtilage of the listed building; as they may be, it is appropriate to have sought listed building consent for their removal.

ANNEX D SCHEDULES OF CONDITIONS

Appeal Ref. APP/U2235/A/13/2209693 Conditions attached to planning permission

- 1) Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Commencement of development for the purposes of condition 3 above shall exclude:
 - demolition of the Norton Electrical building and the removal or breaking out of any wall or hardstanding associated with it;
 - ground investigation and site survey work.
- 5) The details to be submitted pursuant to condition no. 1 above for the new building to be erected attached to the south side of the existing Powerhub building shall be within the following size parameters:
 - a maximum height for the building generally of 21.6 metres AOD with frontage to St Peter's Street, no deeper than 10 metres and no higher than 29.8 metres AOD;
 - a maximum building length of 67.7 metres measured north to south alongside the River Medway;
 - a maximum building length of 112.2 metres measured between St Peter's Street and the River Medway.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: 3332_PL 00 Rev B, 01 Rev A, 02 Rev B, 03 Rev B, 21 Rev C, 22 Rev C, 23 Rev C, 24 Rev B, 25 Rev B, 26 Rev B, 27 Rev B, 28 Rev B, 29 Rev B, 30 Rev B, 31 Rev B, 32 Rev B, 33 Rev A, 34 Rev A, 35 Rev A, 37 Rev C, 38 Rev B, 39 Rev C, 40 Rev B, 41 Rev B, 42 Rev B, 45 Rev B, 46 Rev A, 60 Rev A, 70 Rev B, 1486.13, 1486.P2, 1486.P3, 1486.P5, 1486.136, 1486.137 and 1486.P8.
- 7) No development shall take place until reserved matters approval and listed building consent have been granted for a scheme of development for which there is in place a binding contract for the lease or sale of the property for use as an A1 foodstore in accordance with the provisions of this permission.
- 8) No development shall take place until details of all existing and proposed slab levels and existing site levels across the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) The finished ground floor levels of the lifts and travelators in the retail unit shall be at a minimum level of 7.6 metres AOD; if land raising is required to achieve this, then flood plain compensation shall be provided elsewhere on

the site in accordance with details first submitted to and approved in writing by the local planning authority.

- 10) No development shall take place until details of schemes for both foul and surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) No development shall take place until details and/or samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include: proposed finished levels; all boundary treatments and means of enclosure; the design and specification for the riverside walkway; car parking and servicing layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground; planting plans and specifications (including plant species, numbers and densities); an implementation programme; and a maintenance programme for a period of five years from completion of the works. Development shall be carried out in accordance with the approved details.
- 13) Development shall not begin until:
 - a strategy for investigating contamination present on the site has been submitted to and approved in writing by the local planning authority;
 - an investigation has been carried out in accordance with the approved strategy; and
 - a written report, detailing the findings of the investigation, assessing the risk posed to receptors by contamination and proposing a remediation scheme, including a programme for implementation, has been submitted to and approved in writing by the local planning authority.Remediation work shall be carried out in accordance with the approved remediation scheme and programme. Remediation work on contamination not identified in the initial investigation but found during construction work shall be carried out in accordance with details submitted to and approved in writing by the local planning authority subsequent to its discovery.
- 14) No development shall take place, including any works of demolition, until a construction method statement has been submitted to, and approved in writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for:
 - i) parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during demolition and construction;

- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) measures to prevent the discharge of surface water on to the public highway;
 - ix) measures to avoid or reduce any impact from noise and vibration.
- 15) No part of the development shall be occupied until after practical completion of the highway works defined in clause 2, illustrated on plans 3(a), 3(b) and 3(c) and provided for in section 5 of the Unilateral Undertaking dated 21 May 2014.
- 16) No part of the development shall be occupied until the highway works to provide vehicular and pedestrian access to the application site from St Peter's Street and Buckland Hill have been undertaken in accordance with the approved plans.
- 17) No part of the development shall be occupied for any of the Class A1, A2, A3, B1 and D2 uses hereby permitted until the vehicle parking and turning areas for that part of the development have been completed in accordance with the approved plans. Nor shall any part of the development be occupied until cycle parking/storage facilities for that part have been provided in accordance with details first submitted to and approved in writing by the local planning authority. All such areas shall be retained thereafter for those purposes.
- 18) Prior to the first occupation of each part of the development hereby permitted, an Employees Travel Plan relating to that part of the development, which shall include measures for implementation, monitoring, review and subsequent enforcement, shall be submitted to and approved in writing by the local planning authority. Each Plan shall thereafter be implemented in accordance with the approved details upon first occupation of that part of the development.
- 19) The Class A1 retail use hereby permitted shall not be commenced until a detailed car park management plan for that part of the development has been submitted to and approved in writing by the local planning authority and implemented in accordance with that approval.
- 20) Details of plant and equipment and any containing structure to be erected on the roofs of the existing building or any building hereby permitted shall be submitted to and approved in writing by the local planning authority and implemented prior to first occupation of the development.
- 21) Details of all external lighting shall be submitted to and approved in writing by the local planning authority and implemented prior to first occupation of the development.
- 22) Prior to first occupation of the retail unit, as comprised on approved drawing no. 3332_PL 32 Rev B, a certificate following a post-construction review of that part of the development shall be issued to the local planning authority by a BREEAM Licensed Assessor to show that the building achieves a Very Good BREEAM rating (or any such equivalent rating as may supersede BREEAM as a national measure of the sustainability of a building design).
- 23) The developer shall afford access at all reasonable times during demolition and construction works to any archaeologist nominated by the local planning

authority and shall allow that person to observe excavations and record items of interest and finds.

- 24) The gross internal area of the retail floorspace in the development hereby permitted, including open areas used for the storage, display or sale of goods, shall not exceed 7,430 square metres.
- 25) The net sales area of the retail unit hereby permitted, defined as the area within the walls of the unit to which the public has access or from which sales are made – including display areas, fitting rooms, checkouts, the area in front of checkouts, serving counters, areas occupied by retail concessionaires, customer services areas and internal lobbies in which goods are displayed, but not including cafes and customer toilets – shall not exceed 4,195 square metres. No additional retail floorspace shall be created at any time by any means, including by the installation of mezzanine floors.
- 26) Not more than 1,045 square metres of the net retail sales area, as defined in condition 25 above, shall be used for the sale of comparison goods.
- 27) There shall be no more than one Class A1 retail unit in the development hereby permitted.
- 28) The retail unit hereby permitted shall not be open for customers outside the hours of 07:00–22:00 on Mondays to Saturdays and not outside such trading hours as are allowed by national legislation on Sundays.
- 29) No HGV or LGV visiting the retail unit hereby permitted for the purposes of deliveries or collections shall park and load or unload on St Peter Street or Buckland Hill.

Appeal Ref. APP/U2235/E/13/2209695

Conditions attached to listed building consent

- 1) The works hereby authorised shall begin not later than two years from the date of approval of the last of the reserved matters to be approved under the planning permission relating to appeal ref. APP/U2235/A/13/2209693.
- 2) For the purposes of this consent, commencement shall exclude demolition of the Norton Electrical building and the removal or breaking out of any wall or hardstanding associated with it.
- 3) The works hereby permitted shall be carried out in accordance with the following approved plans: 3332_PL 00 Rev B, 01 Rev A, 02 Rev B, 03 Rev B, 21 Rev C, 22 Rev C, 23 Rev C, 24 Rev B, 25 Rev B, 26 Rev B, 27 Rev B, 28 Rev B, 29 Rev B, 30 Rev B, 31 Rev B, 32 Rev B, 33 Rev A, 34 Rev A, 35 Rev A, 37 Rev C, 38 Rev B, 39 Rev C, 40 Rev B, 41 Rev B, 42 Rev B, 45 Rev B, 46 Rev A, 60 Rev A and 70 Rev B.
- 4) The works shall not begin until full details of the junctions between new construction and the retained listed building have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 5) The works shall not begin until full details of the replacement windows for the listed building have been submitted to and approved in writing by the local planning authority. The replacement windows shall be installed as approved before the first occupation of the building for any of the uses permitted in relation to appeal ref. APP/U2235/E/13/2209693.
- 6) The works shall not begin until full details of the proposed methods of repair to the fabric of the listed building and for the treatment of fabric newly exposed by the removal of parts of the building have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 7) All making good to the fabric of the listed building, externally and internally, shall be carried out using materials and methods that match those used in the existing building.
- 8) The works shall not begin until reserved matters approval and listed building consent have been granted for a scheme of development for which there is in place a binding contract for the lease or sale of the property for use as an A1 foodstore in accordance with the provisions of the planning permission in relation to appeal ref. APP/U2235/E/13/2209693.
- 9) The works shall not begin until a full exterior and interior record of the listed building has been submitted to the local planning authority. The record shall be in accordance with a specification first submitted to and approved in writing by the local planning authority.