

Application Number

CN/2015/0081

Site AddressOldway Mansion
Torquay Road
Paignton
Devon
TQ3 2TY**Case Officer**

Mrs Ruth Robinson

Ward

Preston

Description

Discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 for P/2011/1020 (Change of use of Oldway Mansion and Rotunda from Council Offices to hotel with ancillary conference and spa facilities. External alterations, entrance foyer and refurbishment/reinstatement of glass conservatory. Demolition of squash courts. Improvements to existing car parking area and new car parking to rear service area)

Executive Summary/Key Outcomes

Applications to discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa were considered by DMC at its meeting of the 9th February.

Of particular significance were conditions relating to phasing which link the implementation of the enabling development (the 101 dwellings) to the restoration works to the listed buildings and grounds and secure an enforceable timeframe for delivery of these restoration works.

These are No's 3 and 4 related to P/2011/1020/PA and No 4 related to P/2011/1021/LB.

Condition 3 requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.

Condition 4 required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

The information to discharge these conditions was included in a revised Outline Development Programme (ODP) which sought to change the time frame and mechanism for delivery.

The executive summary of that report is appended which explains the key alterations to the ODP and its deficiencies.

In summary, concerns related to:

- i) The extended time frame for delivery.
- ii) The change in the delivery strategy whereby the capital receipt anticipated from the disposal of the enabling plots would not be delivered upfront but on a more piecemeal basis.
- iii) The reliability of the financial appraisal of the project included in the IVA (Independent Viability Assessment) which underpinned the decision to approve the applications given the increased restoration costs and erosion of the Fernham receipt. Whether this would lead to a need for additional enabling development to meet an increased conservation deficit is a critical issue from the LPA's perspective

Officers had recommended that the information submitted to discharge these conditions should be refused because it failed to ensure that the scheme would be delivered in its entirety in an appropriate manner and in a time frame that would secure the future of the listed buildings on the site and it would also fail to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex.

In addressing Members at the meeting of the DMC on 9th February 2016, the applicant raised a series of points that he wished to be taken on board. In summary these were:

- i) That protective works would be carried out sooner than anticipated in the original ODP
- ii) That the implementation of the enabling development themselves rather than through upfront disposal would deliver a greater profit that could be directly invested in the restoration of the listed buildings
- iii) That only £3.5m would have been available in the form of a 'bond' due to the need to extract fees and the costs of relocating the bowling club from the anticipated £5m enabling pot.
- iv) That greater monies have been committed to the project than anticipated in the original ODP.

The applicants also agreed to consider two key items which they had previously been reluctant to do.

These were the use of a joint account or replacement 'bond' to provide a similar

level of security regarding the delivery of restoration works to that delivered via the 'upfront' capital receipt and to rerun the IVA to examine the financial robustness of the project and whether its delivery was feasible given the increase in costs and the erosion of the Fernham receipt.

On that basis, Members agreed to defer the decision for a period of one month to allow these two factors to be explored and whether any greater security about delivery of the restored buildings and grounds could be achieved.

Discussions were held with the applicant immediately following the DMC decision. Agreement has not been reached about the form that a replacement 'bond' could take although some progress was made.

It was agreed that the consultant who carried out the original IVA should be used to carry out the reappraisal. However, due to holiday arrangements it has not been possible to carry this out in the time frame Members requested. A meeting has been set up for the 9th March to establish terms of reference and to take this forward. It will also enable the claims of increased investment to be properly analysed.

In view of this, Members are requested to allow a period of a further 2 months for this assessment to be carried out and for further discussion regarding the options around securing delivery of this project.

Recommendation

A further 2 months be allowed for a reappraisal of the IVA to be carried out and for further discussion regarding the options around securing delivery of this project.

Statutory Determination Period

These applications were submitted on the 18th August should have been determined by the 14th October. The delay is due to ongoing negotiations.

Site Details

Oldway Mansion is a Grade II* listed building formerly used as Council offices. The Rotunda and Stables are Grade II listed and in an extremely poor state of repair. All are currently vacant. They are set within a Grade II entry in the Register of Parks and Gardens. The site has the benefit of a series of related planning and listed building consents designed to achieve restoration of the buildings and grounds for hotel purposes.

Detailed Proposals

These are applications to discharge various conditions in relation to the planning and listed building consents for the change of use of Oldway Mansion and the Rotunda from Council Offices to a Hotel with ancillary conference and spa facilities.

CN/2015/0081 relates to the discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 pursuant to P/2011/1020/PA

CN/2015/0100 relates to the discharge of conditions 4 5 7 8 and 9 pursuant to P/2011/1021/LB.

Conditions 3 and 4 in relation to P/2011/1020 and condition 4 in relation to P/2011/1021 are of particular significance in terms of delivery of the project.

The remaining conditions are of a more technical nature and information sufficient to satisfy these has been submitted. These could be discharged under delegated powers as they do not go to the heart of the permission. The development could not however proceed unless all relevant pre commencement conditions are formally discharged.

Summary Of Consultation Responses

Historic England Has been consulted and a response is awaited.

Summary Of Representations

None.

Relevant Planning History

A scheme to deliver a Hotel and Spa in the Mansion, Rotunda and Stables funded by residential development within the grounds was approved by DMC in April 2012. The planning permissions were issued on the 24th August 2012.

Planning and Listed building applications to achieve this are:

P/2011/1020: Change of use of Oldway Mansion and Rotunda to hotel with ancillary conference and spa facilities. Approved: 24.08.12.

P/2011/1021: Listed building consent in relation to the above. Approved by Secretary of State: 10.10.12.

P/2012/1011: Change of use and restoration of Stables to hotel use: Approved 24.10.12

P/2012/1012: Listed building consent in relation to the above. Approved by Secretary of State: 11.12.12.

P/2011/0925: Development within the grounds of Oldway Mansion to provide 46 3 and 4 bed houses, new 4 rink bowling centre, reconfiguration of 6 tennis courts, new public car parking, restoration of historic gardens and landscape, construction of 55 sheltered units. Approved 12.09.12

Key Issues/Material Considerations

The key issue is whether the information submitted to discharge conditions 3 and 4 of permission P/2011/1020/PA and condition 4 of permission P/2011/1021/LB which relates to the submission of a revised outline delivery programme (ODP) for the project as a whole delivers adequate confidence about delivery of the restoration package for the Mansion, Rotunda and Stables.

These conditions were of significance in Members reaching a determination on the parent applications. They tied implementation of the scheme to the timetable and delivery strategy embodied in Development Agreement between the Council as landowner and the applicant.

For this reason it is considered appropriate that any changes to the ODP and the implications this has in relation to delivery are considered and determined by Development Management Committee.

Background

In 2007 an informal brief was published to provide guidance about the options for securing investment in the site. This suggested hotel development in the key listed buildings with limited residential development within the Registered Park and Garden to fund restoration of the declining heritage asset.

Separate planning and listed building applications were submitted in August 2011 in relation to the change of use of the main buildings to a hotel complex and the inclusion of residential development in the wider grounds. The applications were agreed in principle by DMC in April 2012.

The residential development within the Registered Park and Garden comprised 'enabling development' and was only approved on the basis that it was necessary to secure the restoration of the Mansion, Rotunda, Stables and grounds.

The enabling development comprised the development of Fernham to provide 55 sheltered units, which is now complete, and within the grounds, the provision of 46 dwellings in the less sensitive parts of the Registered Park and Garden. These are Zones C/D adjacent to Oldway Road and Zones A on the site of the Indoor Bowling Club.

The scheme was required to meet the key tests in Historic England's document 'Enabling Development and the Conservation of Significant Places' (2008). This requires that:

- The 'achievement of the heritage objective is securely and enforceably linked' to the enabling development so that delivery is guaranteed and the LPA is not left in a position where the enabling development is built out but the benefits it was approved to pay for are not secured. This can be done through a S106

agreement, use of a bond or through the use of conditions related to phasing agreements or triggers on occupation.

- The enabling development also has to be shown to be the minimum needed to secure the restoration of the heritage asset. This requires a detailed financial assessment of the costs of restoration balanced against the value of the project to ensure that whilst it is indeed the minimum required to secure the heritage asset there is sufficient value to ensure that the project in its entirety can be delivered and the LPA won't be faced with demands for additional development to fund increased costs. This was confirmed through an Independent Viability Assessment (IVA) and Members were briefed accordingly.

When the decision was made to approve the development on the site, there was an Outline Development Programme (ODP) which was embedded in the Development Agreement between the Council as landowner and the applicant. This was considered to meet these key tests and to provide adequate security about delivery of the project.

In summary, it secured the timely restoration of the buildings against a defined timetable and crucially secured an upfront capital receipt of £5m from disposals of the residential plots to be placed in a jointly managed account. It was sufficient to cover about 2/3rds of the estimated costs of restoring all the listed buildings and about half of the cost of the overall project. This acted like a bond and provided security about delivery of the scheme. It meant that the construction of enabling development could not commence until the money to fund restoration was delivered to the joint account and that necessary restoration works to the listed buildings could commence quickly.

1. The use of conditions to secure delivery of the wider project

Historic England's guidance in relation to enabling development recommends that assets should be repaired before the enabling development commences or the funds necessary to do so deposited as a bond. In this case, the bond was to be secured via the Development Agreement.

Phasing conditions were therefore applied to all the permissions in relation to the site to tie them together and to ensure that the scheme was delivered in accordance with the approved site-wide ODP and that any changes to it would have to be agreed with the LPA in writing.

A pre commencement phasing condition applied to the residential development (P/2011/0925) was not discharged in advance of works commencing in respect of the sheltered flats on Fernham. It was not considered that enforcement action should be taken as commencement was broadly in line with the ODP. The funding derived from the sale of the site was secured and it did not appear that there was any demonstrable harm arising.

However, no further development on the site can proceed without this condition being discharged in view of the changes now proposed to the ODP. A condition was also imposed on all relevant consents to secure weatherproofing of the Stables within a defined time frame as this was the most at risk of the buildings. These weatherproofing works have not been commenced.

The applicants have not sought to challenge the conditions attached to the last planning permissions and listed building consent. The opportunity for challenge of those conditions has long since passed. It can be concluded that the applicants considered the conditions to be reasonable and acceptable.

2. Phasing Conditions in relation to the applications for change of use of the Mansion, Rotunda and Stables to hotel use

The relevant 'phasing' conditions in relation to the applications for conversion of the Mansion, Rotunda and Stables to Hotel use are numbers 3 and 4 pursuant to P/2011/1020/PA and number 4 in relation to P/2011/1021/LB.

For information, the specific wording of the conditions and the reasons for imposing them is provided at Appendix A.

These applications involve a revised timetable and delivery strategy for implementation of the project and additional information to satisfy the Conservation Management Plan. This proposed approach changes significantly the anticipated guarantees around delivery.

Information to discharge these conditions was submitted days before the applications became time expired despite many requests to the applicants to address the matter, since it became apparent that timetables were not capable of being met.

Immediately following submission, works were carried out on site with the intention of preserving the permissions in relation to the future use of the Mansion, Rotunda and Stables in perpetuity.

If the pre commencement conditions are discharged, this could retrospectively legitimise the alleged start. This would need to be established via a Certificate Of Lawful Development.

If the LPA is unable to discharge the conditions, the applications to change the use of the Mansion to a hotel will become time expired, if the acceptability of these applications is not subsequently secured through a planning appeal.

3. Why changes to the Phasing Conditions require careful consideration

The phasing conditions are important as they tie restoration of the heritage asset to the ODP. It is necessary to critically assess whether the revised phasing strategy delivers similar guarantees about securing restoration.

Condition 3 required the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (6th August 2012) unless otherwise agreed in writing with the LPA'.

Condition 4 required (inter alia) a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

This information is required, as explained in the reason accompanying the condition, to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

4. How does the Revised ODP compare to that referred to in the relevant conditions?

The revised ODP is of concern because it does not deliver the restoration of the Mansion, Rotunda, Stables and grounds in the time frame originally set out when permission was granted and there have been fundamental changes to the delivery strategy and financial position the decisions were predicated upon.

These matters have to be taken into account in dealing with conditions that seek approval for an alternative programme of works.

A. Changes to Timeframe

In terms of time frame, the 'approved' ODP indicated that leases would be drawn down on the residential enabling development in January 2013 so the sites could be disposed of to realise funds for the works to commence on the restoration of the listed buildings.

Contractors would be appointed in April 2013 to start work on the Mansion in July 2013 and the Rotunda in October 2013 with completion in October 2014. The position in relation to the Stables was complicated by the need for bat surveys but a condition was imposed to ensure that the hotel use could not commence in the Mansion and Rotunda until the restoration of the Stables (for purposes ancillary to the hotel) was substantially complete.

The revised ODP, leaving the future of the Stables unresolved, would be at variance with the requirements of this condition.

There has been a significant delay in the start of the works. The update to the Conditions Survey 2014 (submitted to satisfy in part the requirements of condition 4) shows that this has led to a substantial increase in the number of defects in all of the listed buildings. This has increased restoration costs by 26% and any further delay in urgent repairs will exacerbate this.

The revised ODP which originally accompanied this application, involved a

significantly extended time frame for delivery and the implementation of 'priority works' to the Mansion only (the Rotunda and Stables were to be mothballed).

These 'priority works' comprise a detailed schedule of remedial works.

Further, these works were only to be completed when the 'enabling development' in Zones C/D and A within the gardens was constructed and available for sale. This introduced an unacceptable delay to necessary protective works being carried out and carried a risk that the houses could be built without any works carried out to secure the future of the listed buildings.

Following several months of discussions the revised ODP has been amended to secure the implementation of all the 'priority works' to the Mansion prior to the sales of the first tranche of enabling development in Zones C/D (providing 22 homes) along with undefined protective works to the Rotunda and a contract for weatherproofing the Stables.

Whilst this is an improvement on what was originally submitted, it is all that can be guaranteed through the revised ODP. This revision explains that the works to convert the Mansion to a hotel will rely on the sales of residential dwellings comprised within zones C/D and A along with possibly quite substantial loans. The works to restore/convert the Rotunda and Stables will rely on mortgaging the hotel when complete. The Applicant is not able to provide guarantees regarding the availability of this additional funding. This provides considerably less certainty than before that the listed buildings and Registered Garden will be repaired and renovated and as such fails to meet both the Council's planning requirements and Historic England's enabling development requirements.

It should be noted that when the decision to approve the scheme was granted in 2012 a significant proportion of the 'priority works, were considered unnecessary, except in relation to the Stables. The listed buildings are now more 'at risk' than before and the 'priority works' are now all necessary, which is a key consideration.

Whilst the improvements negotiated to the revised ODP will ensure that the remedial works to the Mansion might at least begin more promptly, that has to be balanced against the increased uncertainties over delivery of the whole project.

B. Changes to Development Strategy.

Much of the concern regarding delivery stems from the proposed changes to the development strategy. The approved ODP involved the upfront disposal of the enabling development to third party developer which would have secured substantial capital receipts of around £5m to be held in a jointly managed bank account. This would have acted as a 'bond' to secure delivery. It meant that enabling development could not commence until the money was secured and it would have allowed works to proceed quickly on protective works and towards

delivering a restored Mansion, Rotunda and Stables. Prompt delivery is an important factor in dealing with remedial works to listed buildings, especially buildings of the quality of Oldway Mansion.

Whilst additional funding would have been needed to complete the overall project, the Independent Viability Appraisal (IVA) indicated that a significant proportion of the costs of restoration of the listed buildings would have been covered by the size of this receipt and having this 'banked' makes raising additional funding if required a less risky proposition.

The approach to delivery embodied in the approved ODP was validated through the IVA.

The revised ODP effectively deletes the bond as the applicants have decided to develop the housing plots themselves rather than dispose of them 'upfront'. This results in a significant delay in achieving any capital receipt as the funding is reliant on individual sales of completed dwellings. The link that existed between the enabling development and the prompt implementation of restoration works to the historic buildings is thus seriously weakened.

C. Changes to the Financial Position.

The financial position in relation to the Oldway development is also relevant because condition 4 was imposed "To ensure the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site".

If the proposed development programme does not contain sufficient safeguards to ensure that restoration works are delivered promptly, the LPA has no assurance that delays will not lead to further increases in costs which could lead to a failure to complete the renovation works or pressure for additional dwellings on the site.

The factors which informed the IVA in 2012 have, as a result of the matters described earlier in this report changed, these are rising costs, further deterioration in the buildings and the fact that approximately £1.3 million of the £2.1 million secured from the sale of Fernham has been spent on fees. The IVA, which thoroughly assessed all development costs indicated that only £1.2 million was needed to cover the fee requirements for the entire project.

Historic England only recommended support for the scheme on the basis that the IVA confirmed the level of enabling development was the minimum needed to achieve the stated goal of restoration and was based on realistic and achievable financial modelling. Whilst this was demonstrably the case in 2012, and substantially underpinned Members' decision to support the scheme, confidence in its conclusions can no longer be assured given now many of the inputs to the assessment have changed.

In view of this, it is considered that the IVA should be re assessed to ensure that Historic England's enabling development tests can still be met and particularly that no further development will be required to fund the increased scale and costs of restoration works. The applicants question the need for this and have not confirmed they will cover the cost of such work (as is necessary to meet the Council's policy on viability assessment work).

5. Other matters

The timing of restoration of the grounds, as required by the phasing condition is not addressed other than being carried out in 'pockets of relevance' which is as described in the original applications.

The overall scheme for the conversion of Oldway to hotel use included a range of other requirements which formed part of the ODP such as replacement registry office, café, and tennis courts, restoration of the Grotto /historic gardens and new car parking. These matters are not addressed as part of this submission other than by reference to dates.

There are no particular planning reasons to insist on guarantees regarding delivery of the Registry office, tennis courts or café. However the issue of delivery around the historic garden and grotto is very much of concern.

6. Is there a way forward?

It was made clear to the applicants that for a revised ODP to be acceptable there needed to be a greater interleaving between the implementation of the enabling development and the delivery of the restored Mansion, Rotunda and Stables for hotel use and that this needed to be related to defined enforceable triggers rather than on a phasing programme that relied largely on dates.

There is no means of enforcing compliance unless key outcomes are tied to restrictions on occupation, sales, letting of contracts or there is a bond available to the LPA to effectively mitigate any default.

The applicants have been advised what key outcomes are essential and how these can be tied to defined stages in the implementation of the enabling development. Whilst some suggestions have been taken on board, such as completion of specified protective works prior to any sales of the new housing, this still provides no surety over the delivery of the hotel or the future of the Rotunda or Stables beyond a series of anticipated dates and hoped for outcomes.

The applicants do not appear to understand the Council's reservations, as expressed by officers, about securing delivery against dates as the previous ODP was partly reliant on a time frame for implementation.

They find it difficult to understand why a more robust stance should be taken

now. There are three reasons for the LPA's stance.

Firstly, and most importantly, the approved ODP secured a substantial upfront capital receipt, nearly half of the necessary funding for the entire project and a significant proportion of the restoration costs of the listed buildings as confirmed by an IVA. It provides confidence that the scheme will deliver. In the absence of this comfort, it is necessary to be more vigilant over delivery and to try and secure a similar outcome by alternative means.

Secondly, the implications of relying heavily on an unenforceable timetable are now apparent from the current position on the site. The Development Agreement (through which the Council as landlord could exercise control) cannot now, for various legal reasons, be relied on.

Finally, the applicants have been advised that it would be useful to have a comparable understanding of the financial capacity of the scheme through a re run of the IVA given the changes in circumstances. The applicant is reluctant to engage in this.

However, discussions have now stalled and there is a need to reach a determination on the matter given the lapse in time since submission of the details and lack of progress in negotiations.

7. Conclusion

Officers have secured improvements to the revised ODP which will ensure that all the 'Priority Works' are carried out prior to the sales of the first tranche (22 houses) of enabling development.

However against this has to be balanced the fact that it is only these works that can be guaranteed and conversion works to deliver the hotel use are not secured. The future of the Rotunda and Stables is also uncertain. As it was the rescue of these particularly at-risk buildings that underpinned the original approval this is clearly a retrograde position to be in. The delivery of restoration of the gardens is similarly unresolved.

The applicants will argue that the original ODP did not fully guarantee these matters however the availability of a substantial bond up front provided a significant degree of comfort.

This contrasts sharply with the position should the revised ODP be accepted. If this was approved the speed and certainty of delivery would be reduced; the link between the enabling development and delivery of the restored historic buildings would be eroded and the more dubious viability and uncertainty regarding funding sources could expose the Council to a risk of pressure for more enabling development to prop up the project at a later date.

These concerns could be mitigated by the applicants agreeing to a greater degree of interleaving between the restoration of the heritage asset (buildings and grounds) and the implementation of the enabling development and exposing the revised financial components of the scheme to a re-run of the IVA.

This was pivotal in informing Members views in relation to the original approval and any changes to costs, values or the development strategy to be used should be subject to a similar level of scrutiny.

The options available to Members are to:

- Defer the decision on the matter and the applicant be asked to provide more comfort regarding delivery. It is however unlikely to produce a change in the outcome.
- Refuse the application for reasons relating to uncertainty about delivery of the project. However due to the timing of these submissions the applications for planning permission and listed building consent would become time expired unless the matter was subsequently approved on appeal. This has ramifications for the project as a whole.

Recommendation

Officers advise that the information submitted to discharge Conditions 3 and 4 pursuant to P/2011/1020 and condition 4 pursuant to P/2011/1021 in the form of a revised ODP should be refused because it fails to ensure that the scheme is delivered in its entirety in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site and it fails to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in line with policies HE1 and SS10 of the Adopted Torbay Local Plan.

Relevant Policies

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