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Your ref: 12/P/0045/CA

Our ref: NPCU/CAC/D0121/71548

Date: 5 September 2013

Dear Mr Kent

Planning (Listed Buildings and Conservation Areas) Act 1990
Application for Conservation Area Consent – 12/P/0045/CA
Tropicana, Marine Parade, Weston super Mare

I am directed by the Secretary of State for Communities and Local Government to decide your Council's application made under section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act") for the demolition of The Tropicana, Marine Parade, Weston super Mare and its restoration to beach and sea wall. The application was received on 23 March 2012 and deemed to have been referred to the Secretary of State under section 12 of the Act.

A duplicate application (LPA Ref 12/P/0712/CA/13C) for Conservation Area Consent was also made to the Secretary of State on 28 June 2012 and is the subject of a separate decision letter.

The application now falls to be re-determined by the Secretary of State pursuant to the consent order sealed by the High Court on 18 December 2012 which quashed the Secretary of State's original decision of 6 August 2012 granting conservation area consent.

Following the quashing of the original decision, interested parties were invited to make further representations identifying anything they wished to add, including anything they regarded as a material change of circumstances, fact or policy. After the end of that re-consultation on 15 March 2013, there was a final 'reference back' to interested parties from 10 May to 7 June 2013 to allow them the opportunity to consider a number of representations received late in the re-consultation process.

Any representations received on these were then circulated to interested parties for final comment from 14 June to 28 June 2013.

Twelve members of the public commented during the initial re-consultation period associated with this re-determination. Eight objected to the application, two supported the application and two were neutral. In relation to the further reference back exercise, a further six members of the public commented with four in support of demolition and two objecting. Outside of the formal consultation periods, the Secretary of State has also received over 190 letters of objection to the demolition.

The Secretary of State notes that the main change in circumstances since his last consideration of this application is the grant by the Council on 21 February 2013 to Trop (Wsm) Ltd (Trop) of outline planning permission for the redevelopment of the Tropicana site for a 50m indoor pool, outdoor pool and leisure/retail facilities. The committee report for the outline application refers to 631 letters of support from the general public and reports that subject to suitable conditions being imposed there were no objections from statutory consultees including English Heritage, Natural England and Environment Agency. The Secretary of State has received further representations on the Trop scheme, in particular in terms of its viability. The only other significant new issue raised was the potential impact of longshore drift.

The Secretary of State has taken into account all relevant representations and evidence that have been received on the application, including those representations received on the original 2012 determination to the extent that these remain relevant, and those received as part of the re-consultation and reference back exercises referred to above.

BACKGROUND

The Secretary of State notes that the Tropicana was constructed in 1936-7 as an open air swimming pool and leisure complex. It has not been in use as a lido since the summer of 2000. The building is located between the beach and the promenade on Marine Parade, Weston super Mare. It lies within the Beach Lawns Conservation Area but is not a listed building. A new site visit was undertaken on 8 February 2013.

CONSIDERATION

Policy Context

In terms of development plan and national policy, the Secretary of State has considered the application against North Somerset Council's development plan which is its adopted Core Strategy (adopted April 2012), saved policies from the North Somerset Replacement Local plan (adopted March 2007), saved policies from the Joint Replacement Structure Plan (adopted 2002). He has also had regard to relevant policies of the National Planning Policy Framework - NPPF (particularly Section 12 – Conserving and enhancing the historic environment).

He notes that there are nine policies within the Core Strategy that have not yet been adopted. He is satisfied however that these policies do not have any direct bearing on his consideration of this application. He also notes that the Regional Strategy

has been revoked since his original decision on this application, but again does not consider that this has any direct bearing on his consideration of this application. In considering the application, the Secretary of State has also had regard to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In particular, he has had special regard to the desirability of preserving or enhancing the character or appearance of the Beach Lawns Conservation Area.

Heritage Issues

Whether demolition accords with development plan

Paragraph 126 of the NPPF advises that local planning authorities set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment and this is reflected in the Council's Core Strategy Policy CS5 (Landscape and the Historic Environment) which includes provision for the conservation of the historic environment of North Somerset, having regard to the significance of heritage assets such as conservation areas.

Policy CS29 (Weston-super-Mare town centre) provides that alongside and adjacent to the seafront priority will be given to entertainment and leisure uses, tourist facilities and accommodation. Priority will be given to the regeneration of key redevelopment sites such as the Tropicana and that development proposals should be of the highest quality design which will enhance the visual appearance of the seafront and gateway promenade.

The Secretary of State notes that policy CS29 does not specify whether regeneration of the site should be through demolition of the building or whether it should be through the building's retention. The policy does not specifically preclude either approach. He therefore considers that the demolition of this vacant building and creation of additional beach would add to active leisure use in this location and would be in accordance with policies CS5 and CS29.

Deliberate Neglect or Damage

Paragraph 130 of NPPF makes clear that where there is evidence of deliberate neglect or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

The Secretary of State has not seen any evidence from the Council to suggest that it has a maintenance programme in place for this building and by its own admission it does not have funds available for one.

Part of the side wall of the Tropicana is said to have been removed to facilitate access for the temporary storage of sea defence works waste material. The waste material is however said to have been cleared from the building following the end of that use in autumn 2012 and the wall subsequently repaired.

When the site was visited in February 2013 the building appeared in poor condition reflecting its age and the fact it has been closed since 2000. It was however observed that there had been efforts made to secure the building through the boarding up of the windows and there was also evidence of wall repairs.

Based on the evidence provided of repair works and observations made during the site visit, the Secretary of State does not consider that the Council has deliberately neglected or harmed the Tropicana.

The Secretary of State therefore concludes that for the purposes of paragraph 130 the current state of the property can be taken into account in his decision whether or not to permit demolition.

Harm of demolition

Paragraph 138 of the NPPF explains that not all elements of a Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134 as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area as a whole.

The Secretary of State notes that the Tropicana lies on the edge of the boundary of the Conservation Area and that when designated in 1998 the boundary line was purposely drawn to include the building. He has seen no evidence which suggests that the Council has considered reviewing this boundary. The Council's heritage statement on the Tropicana explains that the removal of the building will have a slight negative impact on the Conservation Area due to its communal significance as part of Weston's history, but also states that in its current condition and given the failure to find a viable economic use the restoration of the site to beach would be adequate mitigation for any negative impact.

English Heritage states that it is keen to see this structure reused if practical and considered (in its conservation area designation report 2007) that the building is the most tangible feature surviving from the 1930s in Weston-super-Mare and this is reflected in its inclusion within a Conservation Area. However, it recognised that the Tropicana is not of a significant architectural or historic quality to merit listing. It considers that the positive regeneration of this building would be a public benefit and as such would consider its demolition as harmful to the Conservation Area. It considers demolition would be contrary to paragraph 138 of NPPF, whereby the loss of the Tropicana should be treated as substantial harm to the character or appearance of the Conservation Area.

From visiting the site, it is evident that the Tropicana is an element of the Conservation Area and not a defining feature of it. The Conservation Area is relatively diverse and is covered by a range of distinct architectural styles and the Tropicana sits on the edge. Its key feature is its two storey Mendip stone art deco façade that fronts the promenade.

The Secretary of State considers that the condition of the building detracts from the appearance of the Conservation Area but that overall it makes a positive contribution to the character of that area due to its historical significance and the 1930s façade.

As a consequence, he feels that the return of the site to beach and sea wall would result in harm to the character of the Conservation Area. Although the effect overall will be harmful he considers that this harm would be less than substantial.

In light of the above the Secretary of State considers the proposal to demolish the building should be treated as less than substantial harm and therefore be assessed against paragraph 134 of NPPF and not paragraph 133.

Paragraph 134 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

The beach at Weston super Mare is extensive and is a key feature of the town. The Secretary of State considers that the public benefit arising from the creation of a small additional area of beach is in itself limited. However, he considers that removal of the building would harm the *character* of the Conservation Area.

Paragraph 135 states that: 'In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

English Heritage states that the Tropicana is 'perhaps the most tangible feature surviving from the 1930s in Weston-super-Mare' and that it has 'local significance'. The level of objections to demolition received by the Secretary of State during his consideration of this application has far exceeded those in support and it is clear to him from the evidence submitted that it is a structure of significant local value and has local emotional attachment. In light of this the Secretary of State considers that this points to the desirability of retaining the Tropicana and therefore considers that the scale of the harm caused by its demolition should be given some weight.

Paragraph 136 states that LPAs should not permit the loss of whole or part of a heritage asset without taking all reasonable steps to ensure new development will proceed after loss has occurred. Paragraph 137 goes on to state that LPAs should look to opportunities for new development within the conservation areas and within setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.

The Secretary of State considers that the refurbishment of the Tropicana would enhance and better reveal the significance of the Conservation Area than demolition and return to beach and sea wall, both in terms of the visual appearance and character of the Conservation Area. He is of the view that the refurbishment of the building into entertainment, leisure and tourist facilities and accommodation would be of greater public benefit than that obtained through demolition and return to beach and sea wall and notes that there is currently outline planning consent to redevelop the site for leisure uses and retain parts of the existing building.

Deliverability and viability of alternative scheme

Paragraph 131 in Section 12 of NPPF clearly states that 'in determining planning applications, local planning authorities should take account of: the desirability of

sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic vitality; and the desirability of new development making a contribution to local character and distinctiveness.’ This includes CAC applications.

The Secretary of State has had regard to the fact that there is a proposal with extant planning consent. Information has been submitted to the Secretary of State from the Council, Trop and English Heritage in respect of the viability of this alternative proposal to demolition. He notes that over the last decade several potential redevelopment schemes have been granted planning permission by the Council but none of them has been implemented.

Trop’s outline permission that has now been granted for the redevelopment of the Tropicana is for a 50m indoor pool, outdoor pool and leisure/retail facilities. The Council’s committee report concluded that ‘this proposal would create a leisure development at the seafront which would enhance the town’s tourism offer and provide facilities for existing residents in compliance with policies CS1, CS12, CS29 of the Core Strategy and GDP/3, ECH/3, ECH/11 and ECH/12 in particular of the Replacement Local Plan. However, details of the internal building layout, content and uses remain reserved matters and must be acceptable for the claimed benefits to be achieved’. Irrespective of the granting of planning consent the Council considers that there is no viable or deliverable scheme to redevelop the Tropicana.

Whilst English Heritage is keen to see this structure reused if practical it is not convinced by Trop’s business case that it represents a viable alternative and therefore supports the demolition of the building. The Secretary of State however notes that English Heritage’s advice was heavily caveated. It was only able to assess a small element of the overall costs of Trop’s proposal and was not able to visit the site with its own specialist advisors.

The Secretary of State notes that the Council’s consultant DTZ states that there are a number of key areas in the Trop business case that they have been unable to comment on. He also notes that DTZ made a number of recommendations to the Council to undertake further work in this respect. From the evidence provided to the Secretary of State he is not convinced that the Council has adequately addressed all these outstanding issues.

The Secretary of State understands Trop to have made an assumption in its business case that the freehold of the property will be transferred to them by the Council. In its committee report in February 2013 on the latest development proposal from Trop (Wsm) the Council commented that ‘the [Trop (WSM)] business plan is predicated on the Council transferring the freehold interest which has not been Council policy to date’. The Council has identified that the land remains in its ownership and is an obstacle to the implementation of this scheme. From the representations received it is unclear to the Secretary of State whether this is an obstacle which could be removed at a later date. Neither the Council nor Trop have been able to indicate whether there is a possibility of reaching an agreement on this particular issue.

Whilst the Secretary of State recognises that the issue of the ability of Trop to actually implement of the scheme is outstanding, it appears that this could be resolved in future and that funding for the Trop scheme might also then be made available. He therefore finds that there is a prospect of a potential alternative to demolition, albeit in the medium to long term.

Habitat & Long Shore Drift Issues

The site is adjacent to the Severn Estuary European Marine Site which comprises a Special Area of Conservation, Special Protection Area, Ramsar site and Site of Special Scientific Interest (SSSI). As such, any development that has the potential to impact on these sites should be assessed under the Conservation of Species and Habitats Regulations 2010.

In 2012 the Council carried out initial screening on the original Conservation Area Consent applications. In consultation with Natural England, it concluded that there was no need for an Appropriate Assessment as the demolition would not impact on the European Marine Site. There does not appear to have been any material change to impact on this decision since 2012.

The resulting increase in beach area that would result from demolition of the Tropicana building could lead to potential biodiversity benefits in terms of availability of habitats and would be in accordance with Core Strategy CS4 (Nature Conservation) and saved policy ECH/12 (wildlife sites of international importance). The Secretary of State considers that there would be potential biodiversity benefits but there would only be a small section of beach restored.

Several objectors state that they believe the removal of the Tropicana could cause increased flood risk through accelerated longshore drift (movement of sand caused by wind and tides). However, this is not an issue that has been raised by the Environment Agency (EA) who has issued the Council with a flood defence consent in respect of the proposed demolition of the Tropicana building and reinstatement to beach and sea wall. The Council states that this consent was obtained following discussion with EA on the various matters relating to the impact of demolition of the Tropicana including the question of longshore drift.

In light of the above the Secretary of State is satisfied that the issue of longshore drift through the grant of the flood defence consent has been addressed and is not considered to be a reason of itself to refuse the application.

CONCLUSION

There is policy support for the demolition and reinstatement to beach and sea wall but the policy also supports the building's retention and redevelopment. It is clear to the Secretary of State that there is local opposition to demolition and also potential for redevelopment in the form of retention as evidenced by developer interest shown over the years.

The Secretary of State considers that whilst the building is in poor condition, it currently contributes to the character of the Conservation Area and could make a greater contribution including in relation to the appearance of that area if restored,

but that its removal would be of less than substantial harm. He does not however consider that the public benefits of demolition and reinstatement of beach and sea wall outweighs the harm that would be caused to the Beach Lawns Conservation Area by the building's removal at this stage given the current potential for redevelopment.

The Secretary of State also considers that the refurbishment of the Tropicana would preserve and enhance the character and appearance of the Conservation Area.

The Secretary of State acknowledges that the evidence on whether or not the current planning permission to refurbish the Tropicana represents a viable or deliverable alternative use for the site is finely balanced and notes that there are a number of outstanding issues in this respect. However, in weighing up the evidence before him the Secretary of State considers that there currently appears to be an alternative to demolition, the public benefits of which in the medium to long term are likely to outweigh those that would be associated with its demolition.

The Secretary of State recognises that at a future date there may be changes in circumstances which demonstrate sufficiently that the building cannot be realistically or viably reused and that demolition is the only real practical option available. His refusal of this application does not therefore prevent any party submitting a further application for demolition to the relevant determining body.

DECISION

For the reasons set out above the Secretary of State has decided not to grant Conservation Area Consent for the demolition of The Tropicana pool and buildings proposed by application number 12/P/0045/CA.

A separate Note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged in the High Court.

Yours sincerely



John Oakes
Senior Planning Manager

Enc – High Court Leaflet

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