

- 5a a) 3/10/0569/FN - Renewal of planning permission (reference 3/06/2089/FP) allowed on appeal for the construction of 1, 2 and 3 storey development for retail (A1, A2 and A3) and 18 flats; and
b) 3/10/0570/LC - Demolition of existing buildings at The Dells and 3a South Street, Bishops Stortford, CM23 3AB for Pearlcrown Ltd.
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Date of Receipt: 29.04.2010

Type: a) Full – Major
b) Conservation Area
Consent - Other

Parish: BISHOP'S STORTFORD

Ward: BISHOP'S STORTFORD - MEADS

RECOMMENDATION

- a) That, subject to the applicant varying the legal agreement signed under application 3/06/2089/FP pursuant to S106 of the Town and Country Planning Act 1990 to cover the following matters:
- £5,610 towards Secondary education;
 - £2,532 towards nursery education;
 - £732 towards childcare;
 - £174 towards youth;
 - £2,110 for libraries.

planning permission be **GRANTED** subject to the following conditions:-

1. Three year time limit (1T121)
2. No development above ground shall take place until samples of the materials to be used in the construction of the external surfaces of the development 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 and a sample panel shall be provided on site prior to the commencement of the above ground development and retained thereafter until the development is completed.

Reason: In the interests of the appearance of the development, and in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

3. No development above ground shall take place until detailed drawings at a scale of not less than 1:20 of the doors, windows, shop fronts and roof eaves details have been submitted to and approved in writing by the local planning authority. Development shall be carried

out in accordance with the approved details.

Reason: In the interests of the appearance of the development within the Conservation Area, and in accordance with policies ENV1 and BH6 of the East Herts Local Plan Second Review April 2007.

4. No development above ground shall take place until detailed drawings of all external extractor fans, condenser units, heater flues and meter boxes have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of the appearance of the development within the Conservation Area, and in accordance with policies ENV1 and BH6 of the East Herts Local Plan Second Review April 2007.

5. No development above ground 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 and these works shall be carried out as approved. These details shall include proposed finished levels or contours; hard surfacing materials; minor artifacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting); planting plans and schedules of plants noting species, planting sizes and proposed numbers and planting densities.

Reason: To ensure the provision of amenity afforded by appropriate landscape design. in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

6. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. If within a period of five years from the date of the planting of any tree or plant that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the

approved designs, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

7. The development hereby approved shall not be occupied until communal television facilities have been provided in accordance with details submitted to and approved in writing by the local planning authority. No external television reception facilities other than those shown on the approved details shall be provided.

Reason: To prevent the proliferation of telecommunication facilities in the interests of visual amenity.

8. The development hereby permitted shall not be brought into use until a Green Travel Plan to include proposals to enable all travel to and from the development to be by modes other than the private car has been submitted to and approved in writing by the local planning authority. The approved Plan shall be implemented within three months of the first occupation of the development.

Reason: To promote the use of non car modes of transport in accordance with national guidance in PPG13 and policy TR4 of East Herts Local Plan Second Review April 2007.

9. Access to and egress from the site during demolition and construction works shall be obtained only from the rear service road unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway and public safety

10. Other than the ground floor unit fronting onto South Street, which shall be used for purposes within Class A1 only, the ground floor units hereby permitted shall be used for no other purpose than those in Class A1, A2, and A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification):

Reason: To maintain the retail function and in the interests of the vitality and viability of the town centre, in accordance with policies STC2 and STC3 of the East Herts Local Plan Second Review April 2007.

11. A window display shall be provided at all times in the windows fronting South Street and in the windows of those units fronting The Dells that are in use for purposes within Class A1 and A2 of the Schedule to the

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Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To maintain the retail function and in the interests of the vitality and viability of the town centre, in accordance with policies STC2 and STC3 of the East Herts Local Plan Second Review April 2007.

12. Prior to the commencement of the development hereby approved, a scheme to ensure that the finished floor levels are set no lower than 57.25metres above ordnance datum shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with those details thereafter.

Reason: To reduce the risk of flooding to future occupants in accordance with Policy ENV19 of the East Herts Local Plan Second Review April 2007.

Directives:

1. Other Legislation (01OL1)
2. Highway Works (05FC2)
3. Street Naming and Numbering (19SN4)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies SD1, SD2, HSG8, HSG4, HSG6, TR7, ENV1, ENV2, BH6 and IMP1. The balance of the considerations having regard to those policies and the Inspectors Decision in relation to LPA reference 3/06/2089/FP is that permission should be granted.

- b) That Conservation Area consent be GRANTED subject to the following conditions:-
 1. Listed building three year time limit (1T141)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular the advise in Planning Policy Statement 5: Planning for the Historic Environment. The balance of the considerations having regard to those policies and the decision made within LPA reference 3/05/2319/LC is that permission should be granted.

_____ (056909FN)

1.0 Background

- 1.1 The site is shown on the attached OS map. It is currently a pedestrian passage of varying width that links the shopping area of South Street with the entrance to the Jackson Square development. Within The Dells there are various cafes/shops and other businesses.
- 1.2 This application seeks permission to renew a previous permission (LPA reference 3/06/2089/FP) refused by the Council on 17 January 2010 but later allowed on appeal. The original reasons for refusal were:-

The proposed development fails to exploit the opportunity to provide an open and well lit new public shopping street and accordingly to achieve the high standards of design quality that are sought for new development particularly within prominent public locations. The proposal would, by contrast, result in a confined public space, preventing open views through the site which would be out of keeping with and detrimental to the surrounding street pattern and character. It is therefore contrary to Policy BE2 of the adopted East Herts Local Plan and Policy ENV3 of the Second Review Local Plan and national planning guidance in PPS1.

The proposed development does not make adequate provision for contributions towards other infrastructure improvements to mitigate against the impact of development. It would therefore be contrary to Policy IMP1 of East Herts Local Plan Second Review Re-Deposit Version incorporating Pre-Inquiry Changes.

- 1.3 The Inspectors comments in allowing the subsequent appeal are material to the considerations of this application. Officers attach that Inspectors decision letter as Appendix A to this report.

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- 1.4 The development involves the provision of mixed A classification uses at ground floor, in the form of shops, financial and professional services and cafes/restaurants. An access is maintained through the development to link South Street with the Service Road and the Jackson Square development. The plans indicate the provision of outdoor space in the form of tables and chairs with a hard landscaped area and the provision of a reduced width service road. At first floor and above, the development involves the provision of flats in the form of 6 x 1 bed flats and 7 x 2 bed flats.
- 1.5 The development is at two and three stories. From the South Street elevation, the development replaces the existing with a 2 ½ storey building, with a glazed retail element at ground floor and three semi-circular arches up to first floor level. At second storey the development includes the provision of dormers inset with the roof slope. Within the proposed access passage, the elevation increases in height up to three stories, with boarding, glazing and Juliet balconies. The access road elevation is more significant, and is of a slightly alternative design with differing window forms and an increase height of building, up to four stories.

2.0 Site History

- 2.1 The buildings along The Dells date from the 1970's. The site was subject of an application for ground floor retail and 20 flats (LPA reference 3/05/2037/FP) which was refused permission.
- 2.2 Further to that application, permission was refused in LPA reference 3/06/2089/FP for the reasons outlined in paragraph 1.2 above, but was subsequently allowed at appeal.

3.0 Consultation Responses

- 3.1 The Environment Agency comment that, based on the information supplied, it appears that the predicted flood levels have been reduced. However, permission should only be granted if conditions are attached to any grant of permission relating to floor levels and land contamination. The recommended floor level condition requires that the submission of details to require that floor levels are set no lower than 57.25m above Ordnance Datum. The contaminated land condition requires the submission of details relating to the risk of the site relating to contaminated land.
- 3.2 The Conservation Officer recommends approval of the application and outlines there has been little or no significant change in conservation legislation to warrant refusal of the application. The comments made by the Inspector are therefore relevant, such as conditions relating to samples of materials, window and door details, as these will ensure that the scheme will

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enhance and preserve the architectural and historic character and appearance of the Conservation Area. The Conservation Officer recommends approval of the applications.

- 3.3 The Environmental Health Officer comments that any permission which the Council grants should include conditions relating to the following: noise insulation, soundproofing/vibration control, construction hours of working (plant and machinery), dust, asbestos, air extraction and filtration soil decontamination and piling works.
- 3.4 The Councils Housing Development Manager comments that 40% affordable housing will be expected and 15% lifetime homes. The Officer comments that the 40% affordable housing equates to 7 units which would be welcomed as they will go some way towards meeting the housing needs of the district.
- 3.5 The Planning Obligations Officer representing Hertfordshire County Council recommends financial contributions consisting of £5,610 towards secondary education, £2,532 towards Nursery Education, £732 towards Childcare, £174 towards Youth, £2,010 towards libraries and fire hydrants. The Officer comments that the figures are based upon the Planning Obligations Guidance Toolkit and are based on the current service information for the local area.
- 3.6 The Highways Officer comments that, given the planning history of the site and the approval at appeal, the Highways Authority have no grounds to justify an objection to the application. An advisory note is suggested by the Officer, and a financial contribution of £20,000 to mitigate against indiscriminate off-street parking becoming an issue for bus access to the town centre and to go towards the upgrading of the bus stop on South Street.
- 3.7 The Landscape Officer recommends that planning permission be granted and outlines that the hard landscape design / specification of materials for the paved areas and covered entrances will be pivotal to the finished appearance of the development.

4.0 Town Council Representations

- 4.1 Bishop's Stortford Town Council object to the proposed development as it is detrimental to the street scene.

5.0 Other Representations

- 5.1 The applications have been advertised by way of press notice, site notice and neighbour notification.
- 5.2 No letters of representation have been received.

6.0 Policy

- 6.1 The relevant 'saved' Local Plan policies in this application include the following:-

SD1	Making Development More Sustainable
SD2	Settlement Hierarchy
HSG8	Affordable Housing
HSG4	Affordable Housing Criteria
HSG6	Lifetime Homes
TR7	Car Parking - Standards
ENV1	Design and Environmental Quality
ENV2	Landscaping
BH6	New Development in Conservation Areas
IMP1	Planning Conditions and Obligations

In addition to the above it is considered that Planning Policy Statement 5 (Planning for the Historic Environment) Planning Policy Statement 25: (Development and Flood Risk) and Planning Policy Statement 23: (Planning and Pollution Control) are relevant to the considerations of this application.

7.0 Considerations

- 7.1 This application is a renewal of a previous application (3/06/2089/FP) granted on appeal and a previous Conservation Area application. Accordingly, the Inspectors appeal decision is a material consideration to which significant weight must be attached. That Inspectors decision is attached with this report as Appendix A.
- 7.2 Having regard therefore to the Inspectors decision Officers consider that the main issues in this case are:
- The effect that the proposed development would have on the character and appearance of the area with regard to the design of the pedestrian link along The Dells between South Street and Jackson Square.

- Whether the proposed development preserves or enhances the character and appearance of the Conservation Area.
- Planning obligations

Character and appearance

- 7.3 The size and scale of the proposed development is considered to be significant, in terms of the amount of development on the site, the number of levels and the number of residential units. However, this was not identified as a reason for refusal and was not raised by the Inspector within the appeal decision. Taking those considerations into account, combined with the town centre location of the site with existing high density of development and the grain of development, the proposal is considered to demonstrate compatibility with the structure and layout of the surrounding area in accordance with policy ENV1 of the Local Plan.
- 7.4 The application site lies within the Town Centre of Bishops Stortford, with the frontage onto South Street. Potter Street, which merges into South Street, varies considerably in terms of age, form and diversity of building styles, materials and heights. To the rear of the site is the Jackson Square development. The other important consideration therefore relates to how the proposed development assimilates with the character and appearance of the area from those two road frontages.
- 7.5 The Inspector considered that the two different design treatments for the frontages were 'sympathetic in scale, height, proportion and form with other buildings...on the respective roads'. On the South Street elevation, whilst the form of the building is, to a degree, unusual with the semi-circular arches, and mix of design features, this is not considered to be harmful to the character of the street scene, given the mixture of forms of buildings within the locality. The rear elevation is considered to be modern in appearance and bridges the height and design differences between the proposed building and the larger, more substantial, modern Jackson Square building. In this respect, Officers consider that the elevational treatment of the proposed building responds well to the Service road and the adjoining buildings. With regards to these two principle frontages of the site, Officers consider that the development would preserve the character and appearance of the Conservation Area, in accordance with policy BH6 of the Local Plan.
- 7.6 Much of the criticism the Council previously raised related to the deficiencies of the design in terms of the public access way between South Street, the Service Road and the Jackson Square Development. The

Inspector however considered that the development would draw people into the main shopping area of the Town centre from the access point from Jackson Square, with the 'wide bell mouth design' of the access off the service road, and the opportunity for pavement seating and dining offered within the proposed mixed use development at ground floor. The Inspector considered that the development would provide for a strong, attractive linkage of usable character, within the Conservation Area.

- 7.7 Within the previous refusal (LPA reference 3/06/2089/FP), Officers raised concern that the proposed layout of the development would restrict views from South Street to Jackson Square, which is an existing characteristic of The Dells. However, the Inspector did not consider that views between South Street and Jackson square are essential. In view of his comments and the fact that there has been no material change in the physical characteristics of the site since then, Officers do not consider that there is sufficient justification to now object to the proposal on those grounds.

Planning Obligations

- 7.8 The previous appeal decision allowed the provision of financial contributions cumulatively of £11595 towards education, library and youth and childcare contributions. The Inspector considered that such contributions were fairly and reasonably related in scale and kind to the development and in accordance with the other tests in Circular 05/2005.
- 7.9 The applicant raises no objections to the contributions now sought by the County Council Planning Obligations Officer, which amount to £5610 for Secondary education, £2532 towards nursery education, 732 towards childcare, £174 towards youth and £20110 for libraries, and which cumulatively equate to £11658. The County Planning Obligations Officer outlines that those figures have been calculated using the approach set out within the Planning Obligations Guidance - Toolkit for Hertfordshire (Hertfordshire County Council's requirements). The financial contributions are calculated according to the type, tenure and size of each proposed dwelling and will be used towards mitigating the impact of the proposed development on facilities serving the locality. The development plan background supports the provision of planning contributions and Policy IMP1 of the East Hertfordshire Local Plan Second Review covers the requirement for developers to finance the cost of infrastructure provision and improvements which are fairly and reasonably related in scale and kind. The East Hertfordshire District Council Planning Obligations SPD (Oct 2008) "endorses the approach taken by the County Council in the Toolkit, including the justifications in respect of particular types of planning obligations sought, as detailed therein."

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- 7.10 Having regard to those considerations and the similarities in the contributions to that previously considered to be acceptable by the Planning Inspector, Officers consider that the contributions are fair and reasonable to the scale of the development, and meet the tests as set out in the Planning Obligations Circular.
- 7.11 The other remaining contributions that require consideration relate to a) affordable housing, b) highways contributions and c) open space provision. Officers do not however, consider that it is reasonable to require those provisions for the following reasons.
- 7.12 The planning application subject to this renewal was registered on 22 November 2006 and determined on 17 January 2007. At the time of determination of that application, the statutory development plan consisted of the East Herts Local Plan 1999. However, the decision on that application was made in the knowledge that the Inspectors Decision in respect of the East Herts Local Plan Second Review April 2007 was expected imminently. Within the report of LPA reference 3/06/2089/FP, Officers outlined this situation to Members and acknowledged that the threshold for affordable housing was shortly to be reduced from 25 dwelling to 15 which, in the case of the development at The Dells, would trigger the requirement for affordable housing. However, as outlined within the Officers Committee report for LPA reference 3/06/2089/FP, Officers did not recommend refusal on the grounds of insufficient provision for affordable housing, given the timing of the application and, given the previous reasons for refusal within the 2005 permission. The application was therefore not refused planning permission for reasons relating to the lack of affordable housing.
- 7.13 At the time of the appeal in relation to the refusal of application 3/06/2089/FP, the Inspectors Binding Report for the East Herts Local Plan Second Review April 2007 had been received. Within the Inspectors Decision letter for application 3/06/2089/FP the Inspector attaches 'substantial weight' to the Binding Inspectors Report and raises no objections with regards to the lack of affordable housing provision at the site.
- 7.14 Allied to those considerations in respect of affordable housing provision, Officers consider that weight should also be attached to the physical nature of the development at this site. The development encompasses a site between existing developments, which are flush with the boundary. The development of this site is not a 'stand alone' development, and the opportunity to provide affordable housing within the fabric and form of the previously approved building is considered to be constrained.

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- 7.15 Having regard therefore to the above considerations, Officers consider that, on balance and given the history of the site, and the specific nature of the application, that a requirement for affordable housing provision now is unreasonable, and would fail the tests of the Planning Obligations Circular.
- 7.16 With regards to b) mentioned above in respect of highways contributions, the figure sought by County Highways is similar to that previously considered to be unnecessary in the Officers Delegated report relating to LPA reference 3/06/2089/FP. That report outlined that the pedestrian improvements to the service road crossing were considered to provide immediate pedestrian benefit in a manner relative to the development and would be more comfortably in accordance with government guidelines. Having regard to the considerations previously outlined and considered to be acceptable by the Council and the Planning Inspector, it is now considered to be unreasonable to seek contributions in relation to highway matters within this renewal application.
- 7.17 With regards to c) above, in relation to open space provision, taking into account the comments made above in respect of the previous decisions relating to LPA reference 3/06/2089/FP, it is considered to be unreasonable to now seek contributions in relation to open space provision.

Conditions

- 7.18 The applicant has requested that a five year time limit be attached to the grant of permission. The applicant considers that there are site specific justifications relating to this which can be outlined as follows:
- The scheme is very costly, due to a complicated design.
 - The scheme would substantially improve this part of the town centre, but is only viable in a good economic climate, as the current buildings are of good construction and are fully let to occupational tenants.
 - It is unlikely that the market will recover enough in the next 3 years to make this scheme viable, but there is a possibility that it will recover enough for the scheme to be viable within the next 5 years.
 - There are vacant units in both Jackson Square and South Street which does not help the overall viability of the scheme.

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- There is a chance that if a three year time limit is attached, it will be lost forever, as the client is reluctant to waste further money renewing the consent again. Given the high quality of the scheme, the time spent on this scheme by all involved and the positive impact it would have on the town, this would be a great shame.
- 7.19 What must be considered is whether a three year time limit is appropriate to the size and nature of the development and whether there are any site specific justifications for allowing a five year time limit.
- 7.20 The applicants justification essentially seeks to outline that the viability of the development of the site in the current market and, given the constraints of the site, is difficult. However, the applicant has not provided the Council with any evidence relating to issues of viability and there are therefore no material considerations which would outweigh the provision of a three year time limit, in this instance.
- 7.21 With regards to the other planning conditions set out at the commencement of this report, Officers have had regard to the comments made in the Inspectors Decision. Nothing has changed since those considerations, and Officers therefore consider it reasonable and necessary to replicate those conditions within this renewal application.
- 7.22 However, there are two matters which the Inspectors conditions do not cover and which have arisen through the consultation process on this application. Those issues relate to floor levels and flood risk and contaminated land.
- 7.23 The Environment Agency has commented that the information supplied by the applicant that the flood levels estimated in the Flood Risk Assessment have been reduced. The Environment Agency consider that, in order to reduce the risk of flooding to the proposed development and future residents, that a planning condition requiring the submission and approval of details requiring that the finished floor levels of the development are set no lower than 57.25 above ordnance datum. Having regard to the comments from the Environment Agency and the details within Planning Policy Statement 25 and Policy ENV19 of the East Herts Local Plan Second Review April 2007, Officers consider that the provision of such a condition is reasonable and necessary.
- 7.24 With regards to contaminated land matters, the Environment Agency recommend a detailed pre-commencement condition requiring submissions relating to an assessment of previous uses if the site and potential contaminants of those uses. The Councils Environmental Health department suggest a less onerous condition requiring that the Council is

notified if any contamination is found during construction of the development. Within the Inspectors considerations, no comments or conditions relating to contaminated land are included. The Inspector had regard to the Councils policies within the Local Plan relating to those matters and the advice in PPS23 (Planning Policy Statement 23: Planning and Pollution Control), and did not seek to attach conditions relating to these matters. Accordingly, having regard to that consideration, Officers do not now recommend conditions relating to contaminated land matters.

Demolition of existing buildings

- 7.25 In terms of the demolition of the existing buildings on the site, as proposed within LPA reference 3/10/0570/LC, it is material that Conservation Area consent was previously granted by the Council within LPA reference 3/05/2319/LC. Having regard to that previous decision, the comments from the Conservation Officer and the requirements of Planning Policy statement 5, it is considered that the existing buildings and structure on the site do not make a positive contribution to the character, appearance of setting of the Bishops Stortford Conservation Area. The proposed development is considered to enhance the setting of the site and locality and will therefore conform to the requirements of PPS5.

8.0 Conclusion

- 8.1 Having regard to the Inspectors comments in respect of the appeal relating to application reference 3/06/2089/FP which this application seeks to renew, Officers are of the opinion that the development of the site is acceptable in terms of the impact on the character and appearance of the Conservation Area and its relationship with adjoining development within the immediate and wider locality and will provide an attractive linkage between Jackson Square and South Street. In this respect, the proposal accords with the requirements of policies ENV1, BH6 of the Local Plan and PPS5. The County contributions are considered to be fair and reasonable to the scale of the development and meet the tests of Circular 05/2005. Other contributions are not considered to be reasonable for the reasons outlined above and Officers do not recommend their inclusion.
- 8.2 The application is therefore recommended for approval subject to conditions, and to the applicant entering into a legal agreement as set out above.