



Appeal Decision

Inquiry held on 27 March 2007

Site visit made on 27 March 2007

by **Brian Cook** BA (Hons) DipTP MRTPI

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

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Date: 1 May 2007

Appeal Ref: APP/J1915/A/07/2036167

3a South Street and The Dells, Bishops Stortford, Hertfordshire CM23 3AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Pearl Crown Limited against the decision of East Hertfordshire District Council.
- The application Ref 3/06/2089/FP, dated 19 October 2006, was refused by notice dated 17 January 2007.
- The development proposed is the construction of a part 1, 2 and 3 storey development for retail (classes A1, A2 and A3) and 18 flats.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. Without prejudice to the appellant's appeal against the Council's second reason for refusal, a signed and dated Unilateral Undertaking was submitted during the Inquiry whereby the appellant covenants with the Council to pay the specific financial contributions requested in respect of education, library and youth and childcare services. Paragraphs 3.1 and 3.2 of the document set out the circumstances in which the Deed shall have effect.

Main Issues

2. I consider the main issues to be:
 - (a) 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 the Jackson Square extension being built on Riverside.
 - (b) Related to this, whether the proposed development would preserve or enhance the character or appearance of the Bishops Stortford Conservation Area.
 - (c) Whether the impact of the development on various public services would be such that this should be mitigated by way of appropriate financial contributions in order to make the development acceptable in planning terms.

Planning Policy

3. The development plan for the area includes the Hertfordshire Structure Plan 1991 – 2011 (SP), adopted in April 1998 and the East Hertfordshire Local Plan 1986 – 2001 (LP), adopted in December 1999. The Council has received the Inspector's binding

recommendations following an inquiry into objections to the East Hertfordshire Local Plan Second Review (LPSR) and the Council intends to adopt it at the April 2007 meeting. As the LPSR, as recommended to be changed by the Inspector, is very close to formal adoption, I attach substantial weight to it in reaching my decision.

4. LP policy BE2 sets out the Council's approach to the high standard of design and layout that development must meet while policy BE18 addresses development within Conservation Areas. These adopted policy objectives are carried forward in LPSR policies ENV3 and BH8 respectively. Policy ENV3 sets out a number of criteria against which all development proposals will be judged. Criterion (a) of policy BH8 says that new developments in Conservation Areas will be permitted where they are sympathetic in scale, height, proportion, form, materials and siting to the general character and appearance of the area or are otherwise of such quality as to be highly likely to enhance the character and appearance of the area. SP policy 2 sets out the County Council's approach to seeking contributions towards the provision of environmental works, infrastructure and community facilities, services and other needs that are directly related to the development and necessary to the grant of planning permission. LPSR policy IMP1 develops this in the local context.
5. LP policy BS9 encourages the development and redevelopment of the Riverside/Adderley Road area and sets out in some detail the requirements that the Council expects to be met. Diagram 37 defines the area to which the policy applies and includes the appeal site. This approach is taken forward in LPSR policy BIS17 although the supporting text (paragraph 11.17.15a) acknowledges the grant of an outline planning permission for mixed-use development (in effect, an extension to the Jackson Square Mall) on the site. Construction is now well advanced with the car parking provision in use. Although this scheme excludes the land around The Dells shown on the LPSR proposals map as falling within the scope of the policy, Mr Hagyard confirmed at the Inquiry that, in the circumstances, BIS17 no longer applied to the appeal site. He also confirmed that, although approved for development control purposes, the Council's revised development brief for the Riverside/Adderley Road site (April 2002) had no formal status as supplementary planning guidance. Similarly, the sketch schemes that he produced during the pre-application discussions have no formal status and I have attached no weight to them, or to the revised development brief, in reaching my decision.

Reasons

The design of the pedestrian link along The Dells between South Street and Riverside

6. There are many alleys and walkways leading off the main shopping streets in the town centre and they represent an important part of the character and appearance of the area. They vary in width and, while most are open, some, like that adjacent to No 27 Potter Street and Florence Walk (which is totally enclosed), are entered through an archway. They also vary in interest with The Dells, Riverside Walk and Florence Walk having a variety of town centre uses in the buildings along them while others are simply passages between the flank walls of the adjoining buildings.
7. The appeal proposal would redevelop The Dells area to provide a mixed-use scheme with retail units on the ground floor level and 18 one and two bedroom flats on up to three floors above. A new pedestrian link between South Street and Riverside would be provided which, for the most part, would be open. However, at either end, flats would be built over

The Dells creating archways in both the South Street and the Riverside façades. The Council objects to these enclosing features within the proposed design which, it says, does not provide for a clearly perceived and very important link between South Street and the new extension to Jackson Square.

8. Riverside is a cul-de-sac service road. My understanding of the Jackson Square extension is that car parking will be provided on the ground and first floors and that there will be no active retail frontage to Riverside. I appreciate that an entrance has been located opposite The Dells but there are other entrances to the shops within the Jackson Square Mall as a whole. I consider that the main function of this particular entrance is to enable those using the available spaces as a town centre car park to gain ready access via any of the passages between Riverside and South Street to the town centre shops and services.
9. In my view, the surface treatment of Riverside that has been secured as part of the Jackson Square extension coupled with the wide bell mouth design and the opportunity for pavement seating and dining offered by the appeal proposal would all serve to draw pedestrians into The Dells and thereafter onto South Street. Visual interest along The Dells would be provided by the retail units to both sides and the design concept is such that the length that is open would receive sunlight for much of the day. Moreover, I was able to see the full height of the Jackson Square extension from Potter Street through the archway over the alley adjacent to No 27. I believe that a similar view of its Riverside entrance would be available along The Dells from South Street through the archway in this façade that is part of the appeal proposal.
10. Mr Hagyard accepted that there was no requirement in any policy or design brief that any redevelopment of The Dells should ensure that it remained open along its whole length. In my opinion, the appeal proposal would provide the strong, attractive linkage of usable character that the Council wishes to see and I do not consider that an unobstructed view from South Street of the Riverside entrance to the Jackson Square extension would be essential to ensure that these principles are secured. I therefore consider that the appeal proposal would not conflict with LP policies BE2 or BS9 or LPSR policy ENV3.

Whether the proposed development would preserve or enhance the character or appearance of the Bishops Stortford Conservation Area.

11. The Bishops Stortford Conservation Area is extensive and includes the town centre within which the appeal site lies. South Street/Potter Street is one of the main shopping streets in the town and the buildings, which vary considerably in age, show a wide diversity of building styles and materials and vary between one and four storeys in height although two and three storey buildings predominate. Behind Potter Street/South Street is the modern and larger scale Jackson Square Mall with the extension to it nearing completion.
12. The different design treatments proposed for the South Street and Riverside elevations are sympathetic in scale, height, proportion and form with the other buildings now on those respective roads. The Council acknowledged that the proposal would preserve the character and appearance of the Conservation Area and I see no reason to disagree. The appeal proposal would therefore not conflict with LP policy BE18 or LPSR policy BH8.

The impact of the development on various public services and the need for mitigation by way of appropriate financial contributions.

13. The gist of submissions made on behalf of the appellant is that, since the Council is not seeking to restrict the development or the use of the land, the financial contributions sought by way of the second reason for refusal are not within the scope of Section 106 of the Town and Country Planning Act, 1990. I have considered the references in *The Encyclopedia of Planning Law and Practice* put to me by both the appellant and by the Council in rebuttal.
14. It is apparent that the contribution sought is required to mitigate the likely impacts of the proposed development on defined community services. I am satisfied that Section 106(1) sets out the four discrete elements that may be achieved by way of a planning obligation and that sub-section (1)(d) allows an obligation to be entered into that requires a sum or sums to be paid to the authority. Moreover, I believe that the guidance in Circular 05/2005, *Planning Obligations*, particularly Annex B, paragraphs B15 and B21 to B24 inclusive, has been drafted on that basis.
15. SP policy 2 sets out the circumstances in which financial contributions will be sought and LPSR policy IMP1 develops this. I appreciate that the more detailed policies envisaged by paragraph B26 of the Circular are not yet in the public domain. However, in my view, the development plan policies give the high level guidance referred to in paragraph B25 as to the matters to be covered by planning obligations and the factors to be taken into account when considering the scale and form of the contributions.
16. The County Council services for which contributions are sought fall within both the term 'community facilities and services' set out in SP policy 2 and the more detailed list in LPSR policy IMP1 since the youth service is governed by the Education Acts and therefore falls within the broad category of education facilities. Mr Hinsley agreed that the appeal site was not identified in the development plan for residential use and its development as now proposed would not have been taken into account in service planning by the relevant providers. The appeal proposal would therefore give rise to an additional demand for the identified services. Miss Nixon explained that no contribution was sought towards education, youth or childcare facilities from the single bedroom flats, set out the detailed basis of the calculations used to derive the sums sought and identified the schemes and projects to which the sums would be directed.
17. In all these circumstances, I consider that the completed Unilateral Undertaking dated 26 March 2007 secures contributions that are fairly and reasonably related in scale and kind to the development proposed and meet the other four tests set out in paragraph B5 of the Circular. This Undertaking is a material consideration to which I attach significant weight in concluding that the appeal proposal accords with SP policy 2 and LPSR policy IMP1.

Other matters

18. Mr Hagyard explained the Council's concern that the future residents of the flats proposed to be built over either end of The Dells would be exposed to noise from users of the paths below on two sides of their properties. However, he did not suggest that planning permission should be withheld on this ground alone and he further confirmed that the Council was not suggesting that the opening hours of the units in Use Class A3 should be restricted. I see no reason to disagree with these views.

Conditions

19. I have considered both the agreed and the disputed conditions included in the Statement of Common Ground in the light of the advice set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. Where necessary for clarity, I shall combine some and amend the wording of others. I have also included the suggested and agreed term 'above ground' in certain of the conditions so that preparatory site works can proceed in advance of the approval of the specific details required.
20. To secure the appearance of the development within the Conservation Area I have included the agreed conditions relating to sample materials, sample brickwork panel, details of doors, windows, extraction equipment and landscaping and that put forward to prevent a proliferation of telecommunication facilities. To promote the use of non car modes of travel in accordance *Planning Policy Guidance Note 13, Transport*, and LPSR policy TR4, which sets out the circumstances in which a travel plan will be sought, I shall impose the Green Travel Plan condition agreed, although I shall remove reference to its authorship. The Council confirmed that this condition was intended to apply to users of both the retail and the residential units. To minimise disturbance to users of South Street during development, access and egress shall be from the rear of the site only. To maintain its retail function, I shall impose a condition to ensure that the ground floor unit on South Street remains in Class A1.
21. Regarding the disputed conditions, I agree with the appellant that the proposed window display condition does not meet the test of precision but I agree with the Council that such a condition is necessary to maintain the vitality and appearance of the shopping area. Details of the surface materials for the pedestrian areas can be secured under the landscaping condition and I accept the appellant's argument that a steady flow of pedestrians would be a commercial imperative. I do not therefore consider that it is necessary to require the adoption of the footpath by the Highways Authority. Finally, I understand that surface treatment of Riverside has already been secured as part of the Jackson Square extension and, in any event, I understand that the Highway Authority has not agreed to the narrowing of the road indicated on drawing 1020_31. There is therefore no reasonable prospect of this being implemented within the time limit imposed by the permission and a Grampian condition would not therefore meet the test set out in the Circular.

Conclusions

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

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23. I allow the appeal, and grant planning permission for the construction of a part 1, 2 and 3 storey development for retail (classes A1, A2 and A3) and 18 flats at 3a South Street and The Dells, Bishops Stortford, Hertfordshire in accordance with the terms of the application, Ref 3/06/2089/FP, dated 19 October 2006, and the plans numbered 1020_20, 1020_31, 1020_32, 1020_33, 1020_34, 1020_35 and the unnumbered survey, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 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.
- 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.
- 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.
- 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 artefacts and structures (eg. 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.
- 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.
- 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.
- 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.
- 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.

- 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).
- 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 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).

Brian Cook

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Geoffrey Stephenson of Counsel Instructed by Mr George Robertson, Solicitor to the Council

He called

Mr Tim Hagyard
BA, MATCP, MAUD,
MRTPI

Principal Planning Officer

Miss Jacqueline Nixon
BA (Hons), MA, MRTPI

Principal Planning Officer, Hertfordshire County Council

FOR THE APPELLANT:

David R Hardy

Partner, Cobbetts Solicitors, Number 1, Whitehall, Riverside, Leeds LS1 4BN

He called

Ms Annette Heden
RIBA

Director, Stanford Eatwell & Associates, Brooklands, Stanstead Mountfitchet, Essex CM24 8TD

Mr Stephen Hinsley
BA (Hons) MRTPI

Director, Tetlow King Planning, 32 High Street, West Malling, Kent ME19 6QR

DOCUMENTS

- 1 Unilateral Undertaking dated 26 March 2007 submitted by the appellant
- 2 Extract from the East Herts Local Plan - Inspector's report relating to policy HSG1a submitted by the appellant
- 3 Letter from English Heritage dated 19 December 2006 submitted by the Council
- 4 Letter of notification of the appeal and list of persons to whom it was sent.