

---

## Appeal Decision

Hearing held on 22 September 2015

Site visit made on 21 September 2015

**by G D Jones BSc(Hons) DMS DipTP MRTPI**

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

**Decision date: 6 October 2015**

---

**Appeal Ref: APP/P1425/W/15/3008810**

**Former Central Garage, Sutton Park Road, Seaford BN25 1QX**

- 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 PegasusLife against the decision of Lewes District Council.
  - The application Ref LW/14/0150, dated 5 March 2014, was refused by notice dated 23 December 2014.
  - The development proposed is the demolition of the former garage building and construction of a five storey building comprising 38 retirement apartments, basement car park, access and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the former garage building and construction of a five storey building comprising 38 retirement apartments, basement car park, access and landscaping at Former Central Garage, Sutton Park Road, Seaford BN25 1QX in accordance with the terms of the application, Ref LW/14/0150, dated 5 March 2014, subject to the conditions contained within the Schedule at the end of this decision.

### Preliminary Matters

2. In light of additional material submitted following the determination of the appeal planning application, the Council resolved to withdraw its third reason for refusal regarding highway safety and this was confirmed by the Council's representative at the hearing. I have, therefore, determined the appeal on that basis.
3. At the hearing I was provided with a completed legal agreement dated 22 September 2015 and made under section 106 of the Town and Country Planning Act 1990 (the S106 Agreement). I have taken this document into account in the determination of the appeal.

### Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area and whether or not it would accord with relevant local and national planning policy in respect to affordable housing.

## Reasons

### *Character and Appearance*

5. The appeal site has a frontage to Sutton Park Road to the south and Stafford Road to the north. To Sutton Park Road its frontage is limited to an existing gap between the neighbouring buildings, a bank to the west and a restaurant to the east. In contrast, the site frontage to Stafford Road is considerably broader. At the hearing the main parties agreed that it measures some 50 metres in length. This part of the boundary features a convex curve as the highway sweeps to meet Broad Street to the west. Due largely to its siting close to the junction with Broad Street combined with the length and curvature of the frontage, the site is prominent in this part of the street scene.
6. The wider street scene of Stafford Road is reasonably varied with a range of differing building types, scales and architectural styles. Nonetheless, to the north of the street and along the southern side to the east of Warwick Road the properties are predominantly in residential use and have a reasonably domestic, suburban scale and feel. This contrasts with the southern side of Stafford Road between Warwick Road and Broad Street where the appeal site is located. Here the properties are largely in commercial or civic use with flats on the upper floors and the buildings are of a substantially larger scale.
7. The existing former garage building that stands on the site is set a little back from the street. Nonetheless, due to its length and height this building has a strong influence on the street scene. It has a rather plain and somewhat monolithic appearance, which sits a little awkwardly with the more sophisticated architecture of the buildings to each flank. For these reasons, combined with its fairly dilapidated appearance, the site is currently somewhat incongruous to and detracts from the character and appearance of the area.
8. The proposed building would be taller than almost all of the existing buildings in the area including much of the two neighbouring buildings, the library to the east and the Tesco building to the west. The fourth floor would be set back from the principal front elevation such that, although it would be visible from street level, it would not be prominent. Moreover, the proposed design includes balconies at third floor level at each end of this frontage, thereby providing a gentle transition from the height of these adjoining buildings to that of the proposed development. For these reasons, while it would be generally taller and stand a little forward of the neighbouring buildings, the scale and mass of the appeal building would sit comfortably between the library and the Tesco buildings as well as within the wider street scene, such that it would not appear over-dominant.
9. The building's design does not have a strong domestic character in the way that the residential properties to the north and east have. Nonetheless, it draws on some of the design characteristics and materials of buildings in the surrounding area, particularly those in commercial/civic use, while also creating a fresh, attractive entity in its own right. Given its substantial length of frontage, I consider that the proposed design approach of creating a degree of verticality, for instance through the use of balconies and brick bonds, to be appropriate. This approach could be further developed, as suggested by the appellant's architect during the hearing, through the careful use of materials.

10. For the foregoing reasons, therefore, overall the proposed development would not harm the character and appearance of the surrounding area. Consequently, in this regard it would accord with Policy ST3 of the Lewes District Council Local Plan March 2003 (the Local Plan) and Core Policy 11 of the emerging Local Plan Part 1: Joint Core Strategy (the eJCS), as well as with the National Planning Policy Framework (the Framework).
11. I am mindful of the existing planning permission for residential development at the appeal site<sup>1</sup>. I have, nonetheless, made this assessment based on the merits of the appeal development itself having regard, among other things, to the current appearance of the site and its context as described above.

#### *Affordable Housing*

12. During the hearing, the Council's representative confirmed that the Council does not contest that the appeal development would be unviable if affordable housing were to be secured in any form at this stage. The point of dispute between the parties in this regard is, therefore, in respect to the lack of any built-in review mechanism or 'open book' approach, such that the viability of the development to provide affordable housing could be reviewed at a later date and then for it to be secured if appropriate.
13. The S106 Agreement makes provision for such a review mechanism and the Council confirmed at the hearing that it is content that the obligation therein is sufficient to overcome its first reason for refusal. Nonetheless, notwithstanding having entered into the S106 Agreement, the appellant also confirmed at the hearing that it remains of the view that the proposed development accords with local and national affordable housing policy and as such the provisions of the S106 Agreement would be unnecessary. In this regard the appellant's evidence makes particular reference to the Planning Practice Guidance (the PPG).
14. The PPG confirms that viability assessment in decision-taking should be based on current costs and values. Where a scheme requires phased delivery over the medium and longer term then changes in the value of development and in the costs of delivery may be considered. However, in this case at the hearing the Council confirmed that the proposed development would be likely to be built as a single, un-phased development and that it did not challenge the appellant's estimated build time of 12-18 months. Bearing in mind the wider evidence, including that the appellant owns the site, that the site is vacant/available and that consent is sought for full planning permission rather than outline consent, I have found no good reason to believe that this is not a realistic estimate or that the commencement of development would be likely to be significantly delayed in the event that planning permission were to be granted.
15. Moreover, there is nothing in national planning policy or guidance that supports the approach advocated by the Council for a scheme of this size. As the Inspector in his decision letter for another appeal, which forms part of the appellant's evidence, states *developers operate in a high risk environment and an overage would introduce post implementation uncertainty and it is also likely to hamper the competitive return referred to in the Framework and the*

---

<sup>1</sup> Planning permission ref LW/11/0923

PPG.<sup>2</sup> I also agree with his conclusion that the Government is seeking to boost significantly the supply of housing and consider that in this case a clause along the lines requested by the Council could act as a serious disincentive to the implementation of the proposal.

16. The Council's refusal reason also indicates that the development would conflict with Policy RES9 of the Local Plan and Core Policy CP1 of the eJCS. I have reviewed these policies and while I recognise that they deal with securing a proportion of affordable housing as part of residential development, I have found no requirement for a review mechanism as sought by the Council. At the hearing I asked the Council's representative to take me to those parts of these policies where the Council specifically considers there to be a conflict. However, no such conflict was identified at the hearing and nor is any identified in the wider evidence.
17. For these reasons, therefore, the proposed development would accord with relevant local and national planning policy in respect to affordable housing without the relevant obligation of the S106 Agreement.

### **Other Matters**

18. In the event that planning permission were to be granted the S106 Agreement would potentially secure the affordable housing review and any pursuant contribution as discussed in the Reasons section above, the payment of £5,000 towards the cost of a Traffic Regulation Order (TRO) and a limit on occupancy of the development such that at least one person per household would have to be 60 years of age or more. I have considered the S106 Agreement in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations.
19. For the reasons set out above, the affordable housing obligation would not be fairly and reasonably related to the development in question or necessary to make it acceptable in planning terms. The evidence indicates that the TRO would be required in order to form the requisite vehicular access from Stafford Road and the assessment of the development, for instance in terms of vehicle movements, has been based on the understanding that it would be occupied by mature residents. On this basis, therefore, both of the other obligations of the S106 Agreement would be directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.
20. In addition to the foregoing matters, concern has been expressed locally, including by those who spoke at hearing, regarding a number of matters. These include the loss of commercial premises; overdevelopment of the site; the development's effect on living conditions in terms of overshadowing, overbearing, privacy, noise, disturbance, smell and fumes; its effect on highway safety and parking; there is no need for additional retirement properties and the residents would further unbalance the local age demographic; its effect on the viability of the town centre; the adequacy of local infrastructure and facilities including medical services; the site should be used for other purposes, such as business start-up units, affordable housing and community uses; concerns regarding the appellant's viability assessment;

---

<sup>2</sup> APP/N0410/A/13/2207771

access arrangements for emergency vehicles; and flood risk and foul/surface water drainage.

21. These matters are largely considered within the Council's Committee report on the appeal development. They were also before the Council when it prepared its evidence and when it submitted its case at the hearing. The Council did not conclude that they would amount to reasons to justify withholding planning permission. Subject to the identified provisions of the S106 Agreement and the imposition of planning conditions, I see no good reasons to disagree.

### **Conditions and Conclusion**

22. I have been provided with a schedule of conditions suggested by the main parties, which I have considered in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly. For the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would be necessary.
23. Conditions requiring the submission and approval of sample materials to be used in the construction of the external surfaces of the development and details of boundary treatment would be necessary to safeguard the character and appearance of the area. A condition requiring that a site investigation of the nature and extent of contamination affecting the site, along with any necessary remediation, would also be necessary to safeguard the health of future occupiers.
24. A condition to require the submission and approval of details of surface and foul water would be necessary to safeguard the development from the risk of flooding and to protect the environment. Conditions to secure the provision and control of the proposed access and parking would be necessary in the interests of highway safety. A condition to secure the implementation of a Construction Environment Management Plan would also be necessary in the interests of highway safety and to protect the living conditions of local residents during the construction period.
25. To secure appropriate living conditions for occupants of the proposed development, a condition to secure the assessment of acoustic impact and the implementation of any pursuant mitigation would be necessary. To mitigate any risk to groundwater, a condition would be necessary to control the details of piling or any other foundation design.
26. For all of the reasons given above, I conclude the appeal should, subject to the identified conditions, be allowed.

*G D Jones*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANTS:

Mr C Howell Williams	of Queens Counsel
Ms H Allan	Planning - Barton Willmore
Mr T Riley	Architect – RCKa Architects
Mr R Parker	Highways – Peter Brett Associates
Mr R Garside	Viability – G L Hearn
Mr G Flitcroft	PegasusLife

### FOR THE LOCAL PLANNING AUTHORITY:

Ms T Bahcheli	Tezel Bahcheli Ltd
---------------	--------------------

### INTERESTED PERSONS:

Ms D Ward	Seaford Residents' Voice
Cllr S Gauntlett	District Councillor
Mr S Curtis	Local Resident
Mr Ali	Dunkies Restaurant, Seaford

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Letter from District Councillor Prof P Gardner BSc(Eng) MEng CEng EurIng PhD FICE
- 2 Schedule of suggested conditions agreed by the main parties
- 3 Land Registry – Official copy of register of title, no ESX289226
- 4 Additional access drawings, nos 29738/001/011 and 29738/001/003 C
- 5 Composite drawing of sections
- 6 Booklet of drawings and computer generated images
- 7 Assessment of GP provision / healthcare capacity prepared by Barton Willmore
- 8 Commentary on Emergency Access and Facilities prepared by RCKa Architects
- 9 Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 dated 22 September 2015

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/P1425/W/15/3008810:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1314-PL-ST-000D; 1314-PL-ST-010D; 1314-PL-ST-100 D; 1314-PL-ST-101 D; 1314-PL-ST-102 D; 1314-PL-ST-200D; 1314-PL-ST-201 D; 1314-PL-GA-600 G; 1314-PL-GA-599 G; 1314-PL-GA-601 G; 1314-PL-GA-602 G; 1314-PL-GA-603 G; 1314-PL-ST-604 G; 1314-PL-GA-605 G; 1314-PL-GA-700 G; 1314-PL-GA-701 G; 1314-PL-GA-702 G; 1314-PL-GA-800 G; 1314-PL-GA-801 G; 1314-PL-GA-802 G; 1314-PL-DOC-001; 1314-PL-GA-580 H; 29738/001/011; and 29738/001/003 C.
- 3) Before the development hereby approved is commenced on site, with the exception of demolition/site clearance, details/samples of all external materials including surfacing materials shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with these approved details.
- 4) Before the development hereby approved is commenced on site, with the exception of demolition/site clearance, details of all boundary treatment, including a plan indicating the positions, design, materials and type, shall be submitted to and approved in writing by the Local Planning Authority (LPA). The approved boundary treatment shall be fully completed prior to first occupation of any unit.
- 5) Use of the development hereby approved shall not commence until the vehicular access, including works within the highway/off site, has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The access shall have maximum gradients of 2.5% (1 in 40) from the channel line and 11% (1 in 9). Once completed the access shall be retained thereafter to provide vehicular access to the basement parking area.
- 6) Use of the development hereby approved shall not commence until the approved parking and associated circulation, manoeuvring and turning space have been provided in accordance with the approved plans. These areas shall thereafter be retained for those purposes only.
- 7) No development shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the Local Planning Authority (LPA). If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the LPA. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the LPA. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the LPA. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the LPA within 28 days of the report being completed and approved in writing by the LPA.

- 8) No development shall take place until a Construction Environment Management Plan (CEMG) has been submitted to and approved in writing by the Local Planning Authority. The approved CEMG shall set out the arrangements for managing all environmental effects of the development during the construction period, including temporary site security fencing, artificial illumination, noise, vibration, dust, air pollution and odour, including those effects from the decontamination of the land. It shall also include a Construction Traffic Management Scheme detailing the size of vehicles, routing of vehicles, hours of operation, parking and management of contractors' vehicles, provisions for on-site wheel washing and restrictions on hours of construction / demolition. Construction / demolition associated with the development shall only progress in accordance with approved CEMG.
- 9) An assessment of the acoustic impact on the development, including in respect to that arising from the operation of all externally located plant in accordance with BS 4142: 1997, shall be undertaken. The scheme shall achieve the following:
- a) The Noise Rating associated with any internal plant within any (unoccupied) domestic living room or bedroom with windows open (during the day or at night) shall be no more than NR30;
  - b) The Noise level within any (unoccupied) domestic living room or bedroom with windows open shall be less than 35 dB LAeq, 16hr during the day and less than 30 dB LAeq, 8hr at night;
  - c) The noise level due to road traffic within any (unoccupied) domestic bedroom with windows open shall not exceed 45 dBL AFMAX at night; and
  - d) The noise level due to road traffic shall be less than 58dB LAeq, 1hr on balconies, terraces and in outdoor living areas during the day time.
- Where the standards (a), (b) and (c) above cannot be achieved with windows open they shall be achieved with windows shut and other means of adequate ventilation provided. For the purposes of (a), (b), (c) and (d) above day is taken to be 07:00 to 23:00 hours and night the remainder.
- The scheme shall be approved in writing by the Local Planning Authority (LPA) and shall be fully implemented before the use commences. Also before the commencement of the use, the scheme shall be tested to confirm that it meets the relevant predictions for which a written report shall be submitted to and approved in writing by the LPA.
- 10) Before the development hereby approved is commenced on site, with the exception of demolition/site clearance, details of the proposed surface water drainage and foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the first use of the development.
- 11) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express prior written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with any such approved details.