



Appeal Decisions

Site visit made on 24 October 2017

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 3 November 2017

Appeal A: APP/P1425/W/17/3177874 **15 - 17 High Street, Seaford BN25 1PE**

- 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 Meldarosa Properties Ltd against the decision of Lewes District Council.
 - The application Ref LW/17/0022, dated 9 January 2017, was refused by the Council by notice dated 17 May 2017.
 - The development proposed is demolition to rear of listed building and replacement with three dwellings.
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Appeal B: APP/P1425/Y/17/3177880 **15 - 17 High Street, Seaford BN25 1PE**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Meldarosa Properties Ltd against the decision of Lewes District Council.
 - The application Ref LW/17/0023, dated 9 January 2017, was refused by the Council by notice dated 17 May 2017.
 - The works proposed are demolition to rear of listed building and replacement with three dwellings.
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Decision Appeal A

1. I allow the appeal and grant planning permission for demolition to rear of listed building and replacement with three dwellings at 15 - 17 High Street, Seaford BN25 1PE in accordance with the terms of the application, Ref LW/17/0022, dated 9 January 2017, subject to conditions 1) to 16) on the attached schedule.

Decision Appeal B

2. I allow the appeal and grant listed building consent for demolition to rear of listed building and replacement with three dwellings at 15 - 17 High Street, Seaford BN25 1PE in accordance with the terms of the application Ref LW/17/0023, dated 9 January 2017 and the plans submitted with it subject to conditions 1) to 3) on the attached schedule.

Main Issues

3. In both appeals there is the following main issue;
 - The effect of the proposals on the architectural or historic significance of the listed building and its setting within the Seaford Conservation Area.

4. In Appeal A only there is the further main issue of;
 - The effect of the proposed residential development on the living conditions of adjacent occupiers, with particular regard to privacy.

Reasons

Designated Heritage Assets

5. The frontage building is listed Grade II, although the appellant challenges the Council's view that this extends to the coach house to the rear. The listing description from 1971 does not greatly assist, being for identification purposes rather than setting out to define the areas of significance. Whilst there is a wall running diagonally between the frontage building and the coach house, there is no firm evidence of its age or purpose, and no firm evidence of what premises the coach house would have served if not the principal listed building.
6. The proximity and access from the rear all point to this being a building associated with 15 – 17 High Street, and that finding is supported in the appellant's Heritage Statement prepared by Archaeological Services Lewes. Whilst that Statement puts forward thoroughly-argued reasons for permitting the removal of the building, it is of note that in the Mitigation Strategy, paragraph 134 of the National Planning Policy Framework is referred to and that paragraph concerns designated heritage assets, that is to say listed buildings and the like. On the evidence available, the conclusion is that the coach house should be regarded as a curtilage listed structure, as should the wall.
7. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the same Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Substantial harm to or loss of a Grade II listed building should be exceptional. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings.
8. These duties are reflected in Policies H2 and H5 of the Lewes District Local Plan (as saved within the Joint Core Strategy) and Policy CP11 of the Joint Core Strategy. Policy H2 in particular states that consent will not be granted for any proposal which involves the demolition of a listed building unless the Council is satisfied that every possible effort has been made to continue its present use or find a suitable new use.
9. Having determined that the coach house and diagonal wall should be considered as curtilage listed structures, it is necessary to assess their significance. Clearly the frontage building has high significance in terms of its contribution to the townscape, to historical understanding of the development of the town, and the intrinsic architectural and historic significance of the building. The association with a bailiff of the town adds further to the historic

- interest. Its presentation is however severely compromised by later works to enclose the rear wall and form the covered yard.
10. The coach house retains a lower level of historic significance and some features of architectural interest, albeit not of high significance, rarity or value. The structural report makes clear the shortcomings of the building and the likely intervention necessary to fit it for a beneficial use. The appellant refers to plans to form two dwellings here. There would be a real risk of loss of fabric and structure during the works and it is not readily apparent the extent to which features of interest could be incorporated or displayed in any such use. It is an attractive proposition that the building would be presented without the harmful flat roof of the covered yard, but it could be that this feature is what has kept the building intact and useable to-date.
 11. With regard to the diagonal wall, it is poorly constructed and again compromised by the covered yard, and real doubt persists over how it might be incorporated into a scheme or what significance would be preserved as a result.
 12. Nevertheless, the appeal proposal is to demolish both the coach house and the diagonal wall in favour of the construction of three dwellings and their necessary outdoor space and access. Paragraph 132 does not preclude the loss of Grade II listed buildings, but that leads to paragraph 133 and 'substantial harm' as the relevant reference since the loss cannot be classified as 'less than substantial' under paragraph 134. Consent should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of further criteria apply.
 13. Whilst the process of deciding between paragraphs 133 and 134 has led to the former, weight attaches to the poor condition of the building and the difficulties of re-use in a way that does not risk loss of that which is of interest. Nevertheless, the appellant's argument is with regard to there being benefits and those will be considered now.
 14. The provision of three dwellings in this town-centre location close to transport, services and employment would be a benefit, as would the reduction in use of the access, assisting in improving the living conditions of occupiers to the west. The removal of the unattractive warehouse would improve the outlook from dwellings to the north and their access to sunlight and daylight.
 15. The most significant weight attaches to the enhancement of the rear of the principal listed building, that which fronts the High Street. In the order of heritage significance, this building is markedly more important than either the coach house or the wall. The Framework makes clear the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, and such considerations form one of the core planning principles stated in that document. The harmful covered yard would be removed, again presenting the building as a shallow frontage structure and that enhancement could likely be seen from public places in the conservation area, as even a casual view into the building from the High Street would appreciate the change.
 16. To realise the benefits in full, it would be necessary to remove the coach house and the diagonal wall as the footprint of the houses and their outdoor space

impinges on that of the curtilage listed structures. Consideration has been given to retaining the wall, but its condition militates against that.

17. The appellant describes the proposal as 'enabling' works to the principal listed building, but that term is more usually reserved for development which is contrary to the Development Plan, perhaps through being in the countryside, and strict rules apply as set out by Historic England. In this case the proposed enhancement to the principal listed would be a benefit that can be weighed as set out in paragraph 133.
18. In the balance, it is concluded that the enhancement to the principal listed building through its exposure by the removal of the covered yard carries substantial weight and, together with the other public benefits, the harm caused by the removal of the coach house and diagonal wall would be outweighed. It is not necessary to consider the further alternative criteria in paragraph 133 as it has been demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.
19. Turning now to the Council's second reason for refusal, that of the effect of the new building on the frontage listed buildings, and the understanding of the historic curtilage. The preparatory works of removal which have been found acceptable would leave the principal listed building exposed along a newly preserved and enhanced rear wall line. The removal of the diagonal wall would provide for a new boundary to be established between the proposed houses and the listed building. Whilst the new buildings would be of two-storey construction with rooms in the roof, the distance between them and the rear of the listed building and the obvious differences in design and form would permit both to sit harmoniously together.
20. There would be a limited adverse effect, but only when measured against an exposed rear wall which would not occur other than under a scheme which brings about the removal of the covered yard. This is a case where paragraph 134 does apply and the same public benefits outweigh the less than substantial harm.
21. As with truly 'enabling development' it is essential that a mechanism is in place to ensure that the benefits are delivered and not just the harm. Since the balance employed above includes work to the principal listed building, which is not within the red-line site plan, and is work that might not, in total, result from the development of the three houses, some form of Undertaking would be required. The mechanism will be considered after the second main issue, but for the moment it is concluded that the complete scheme would satisfy the tests in the 1990 Act, the requirements of the Framework, as well as Policies H2, H5 and CP11.

Living Conditions

22. The Council accept that drawing 2D shows obscure glazing to the lower part of the rear-facing windows to bedroom 2 in each house, but are of the view that it would be unreasonable, unrealistic and impractical to expect that these windows will not be opened on occasions, giving rise to harmful overlooking. In addition the Council consider that it would be difficult to enforce retention of the obscure glazing and that the pressure to replace the windows with clear glass could be intense and irresistible.

23. Policy ST3 of the Lewes District Local Plan requires that development should respect the amenities of adjoining properties in terms of noise, privacy, natural daylight, and visual amenities and smell. As previously stated, there would be improvements for premises on Church Lane in natural daylight and visual amenity through the removal of the warehouse, and the proposed new houses would be placed further from the mutual boundary. Nevertheless, there would be a risk of an adverse effect on privacy and the need for the lower part of the first floor windows to be obscure glazed is proven. The drawings are not explicit as to the opening method and such as a bottom-hinged hopper-style window would not afford opportunity for overlooking when open. The occupiers of the room, used as a bedroom in any event, would have ample access to light, and a view of sky. There is nothing unusual in this arrangement in a town centre location, and this could be secured by condition.
24. Both the Framework and the web-based Planning Practice Guidance set out the tests with regard to the use of conditions and they would be required to be considered were the Council to be presented with pressure to relax the requirement through application under section 73 of the Town and Country Planning Act 1990. Such a condition is presently necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development, and that situation is unlikely to be found to have changed in the future. With such a condition the development would not unduly affect the living conditions of neighbouring occupiers in the terms of Policy ST3.

Undertaking and Conditions

25. The appellant has supplied what is described as an 'Obligation', signed and witnessed, but within the document are the words *'if this appeal is successful, Meldarosa Properties Ltd would enter into a planning obligation agreement with Lewes District Council to deliver the renovation'*. The items listed in the documents appear a full inventory of required works, and weight has been attached to this in the listed building balance. The document also contains the words *'by building 3 x 3 bedroom properties we should be able to raise sufficient funds to undertake the full restoration'* [emphasis added].
26. In view of the level of harm identified and the necessity of the beneficial works being carried out and not just the harmful demolition, more than this is required. The Council suggests a condition requiring a scheme to be submitted and approved, and for it to be implemented prior to the first occupation of the new houses. That scheme should be submitted prior to development commencing, and should be backed by a legally binding undertaking. There is no suggestion of a conservation deficit and it would be reasonable to assume that much of the internal works to the principal listed building would be funded through up-lift on the value of the property once repaired.
27. It would be usual with the loss of a listed building to secure recording for posterity, secured by condition, but in this case the Archaeological Services Lewes statement is as full a record as is needed.
28. Other conditions concerning materials, floor levels, landscaping, archaeological works, flood risk mitigation, contamination, hours of working and the submission of a Construction Environment Management Plan are reasonable and necessary in view of the location of the site. The condition on the bedroom windows should include reference to the method of opening and to prevent use

of what appears to be balcony for other than maintenance and tending of planting.

29. Lastly, a condition is required to be attached to the planning permission detailing the drawings to which this permission relates, for the avoidance of doubt and in the interests of the proper planning of the area.
30. With regard to the listed building consent, many of these do not need restating, but it is necessary to ensure control over demolition and the secure the enhancement to the principal listed building.

Conclusions

31. Whilst the loss of any listed building should be considered an exceptional event, the balance in this case lies in the coach house and diagonal wall being removed in order to secure the significantly more important aim of enhancing the principal listed building through the removal of inappropriate and substantially harmful later additions. The enhancement of the frontage building is a substantial public benefit and the other benefits of the provision of three houses, the removal of the warehouse and the reduction in the need for large goods vehicles to visit, add further weight in favour of the scheme. That scheme has to be delivered as a whole and a condition is employed to ensure that the benefits are realised and not just the harm. For the reasons given above it is concluded that both appeals should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions - Appeal A Planning Permission

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: won 01E, 10B, 12B, 13A, 14D, 15A, 16C, 18B and 19B.
- 3) No development or demolition shall commence until details of the materials to be used on external surfaces of the dwellings hereby approved have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out only in accordance with that approval.
- 4) No development or demolition shall commence until details of the floor levels of the dwellings hereby approved, with reference to a stated datum, have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out only in accordance with that approval.
- 5) No development or demolition shall commence until details of the landscaping of the site have been submitted to and approved in writing

by the Local Planning Authority together with a programme for implementation. The landscaping scheme shall include hard features and planting and shall include details of all boundary treatment. The development shall be carried out only in accordance with that approval.

- 6) No development or demolition shall commence until a scheme to secure the repair and enhancement of the principal listed building has been submitted to and approved in writing by the Local Planning Authority together with a programme for implementation. No dwelling shall be occupied until the repair and enhancement works have been carried out or the Local Planning Authority is satisfied that contracts have been let to that end.
- 7) No development or demolition shall commence until the developer has secured the implementation of a programme of archaeological work, in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority. The dwellings hereby permitted shall not be occupied until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation, and that provision for analysis, publication and dissemination of results and archive deposition has been secured, unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.
- 8) No development or demolition shall commence until a Construction Environment Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan is to include details of the measures to be employed with regard to the delivery and removal of materials, the storage of materials, the parking of operatives' vehicles and the suppression of dust and noise.
- 9) The construction work for the development and demolition together with any deliveries to the site and removals from it shall be carried out only between the hours of 0800 and 1800 Monday to Fridays and 0800 and 1300 on Saturdays. No such activity shall take place on Sundays, Public and Bank Holidays.
- 10) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) (thirtynine ref. WON 25 C, dated February 2017) and the following mitigation measures detailed within the FRA:
 1. No sleeping accommodation shall be set on the ground floor, with the first floor finished floor level set at least 2.5m above the existing ground level.
 2. All other mitigation measures described under 'Flood Resistance' (p.5-6) and 'Resilient Design' (p.6).The mitigation measures shall be fully implemented prior to occupation of any of the dwellings, or within any other period as may subsequently be agreed by the Local Planning Authority.
- 11) Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with

contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

1. A preliminary risk assessment including a site walkover which has identified: all previous uses, potential contaminants associated with those uses, a conceptual model of the site indicating sources, pathways and receptors potentially unacceptable risks arising from contamination at the site.
 2. A site investigation scheme (if required), based on 1 above to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in 3 above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the Local Planning Authority. The scheme shall be implemented as approved.
- 12) The dwellings hereby approved shall not be occupied until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.
 - 13) Reports on monitoring, maintenance and any contingency action carried out in accordance with a long-term monitoring and maintenance plan shall be submitted to the Local Planning Authority as set out in that plan. On completion of the monitoring programme a final report demonstrating that all long-term site remediation criteria have been met and documenting the decision to cease monitoring shall be submitted to and approved in writing by the Local Planning Authority.
 - 14) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy, detailing how this unsuspected contamination shall be dealt with.
 - 15) The dwellings hereby permitted shall not be occupied until the windows at first floor level to bedrooms 2 which face dwellings on Church Lane have been fitted with obscured glazing to a height of 1700mm above finished floor level, and no part of those windows that is less than that level shall

be capable of being opened unless some other arrangement has been submitted to and approved in writing by the Local Planning Authority. The obscure glazing and approved opening arrangements shall be retained thereafter.

- 16) The open area outside the side facing windows to bedrooms 2 shall not be used as a balcony or similar sitting or standing amenity area, and access is to be for only cleaning, maintenance and repair, and the maintenance of any planting placed there.

Schedule of Conditions - Appeal B Listed Building Consent

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) No works including demolition shall commence until a scheme to secure the repair and enhancement of the principal listed building has been submitted to and approved in writing by the Local Planning Authority together with a programme for implementation. No dwelling shall be occupied until the repair and enhancement works have been carried out or the Local Planning Authority is satisfied that contracts have been let to that end.
- 3) No works including demolition shall commence until the developer has secured the implementation of a programme of archaeological work, in accordance with a Written Scheme of Archaeological Investigation which has been submitted to and approved in writing by the Local Planning Authority. The dwellings hereby permitted shall not be occupied until the archaeological site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation, and that provision for analysis, publication and dissemination of results and archive deposition has been secured, unless an alternative timescale for submission of the report is first agreed in writing with the Local Planning Authority.