



## Appeal Decisions

Site visit made on 5 July 2023

by **C Shearing BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 September 2023**

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### **Appeal A Ref: APP/B1415/W/22/3298210**

#### **Land at Newts Way, St Leonards on Sea TN38 9TH**

- 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 Ms E Owuzu against the decision of Hastings Borough Council.
  - The application Ref HS/FA/20/00715, dated 5 October 2020, was refused by notice dated 11 November 2021.
  - The development proposed is construction of a single dwellinghouse which would include 3 bedrooms, work from home space, gardens, parking and access to Newts Way.
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### **Appeal B Ref: APP/B1415/W/22/3298505**

#### **Land at Newts Way, St Leonards on Sea TN38 9TH**

- 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 Ms E Owusu against the decision of Hastings Borough Council.
  - The application Ref HS/FA/20/00959, dated 15 December 2020, was refused by notice dated 11 November 2021.
  - The development proposed is construction of four family dwellinghouses which would include work from home space, gardens, parking and access to Newts Way.
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### **Decision**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Applications for Costs**

3. Applications for costs were made by the appellant against Hastings Borough Council in respect of both Appeal A and Appeal B. These applications are the subject of a separate decision.

### **Main Issues**

4. The main issues for both Appeal A and Appeal B are:
  - The effect of the proposals on the character and appearance of the area, with particular regard to the loss of open space, the siting and form of the developments, design approach and effects on trees;
  - Whether the proposals would provide an acceptable standard of accommodation, with regard to natural lighting and, in the case of Appeal B, provision of outdoor space;

- The effects on the living conditions of nearby occupants, with particular regard to the privacy of occupants of 2 – 7 The Sedges, and;
  - The effects on biodiversity.
5. In addition, the effect of the development on highway safety is also a main issue for Appeal B.

## **Reasons**

### *Character and Appearance- Loss of Open Space*

6. The appeal site occupies a central position among existing residential development which extends in a series of cul de sacs from Darwell Close and Newts Way. It sits among a belt of trees and shrubs which extend along the lowest parts of the valley, from which the residential development extends to the north and south. As a result of its position at the junction of Darwell Close and Newts Way, the appeal site is visually prominent when approaching from the east.
7. The residential developments of the surrounding area demonstrate variations in their design and appearance, for example with varying brick shades and roof forms. However, there is a degree of consistency in their footprints, plot sizes, relationships to the street and the layouts, set around cul de sacs. Together these give the appearance of a cohesive residential development.
8. At the time of my visit the appeal site was heavily overgrown and difficult to access given its unkempt condition. The Council's Officer Report describes the site in a similar condition and states that it has previously been enclosed by hoardings to prevent fly tipping and antisocial behaviour. Despite the former intention for this site to be designated play space<sup>1</sup>, this is clearly not the case now and there is not evidence to suggest that the site would otherwise be reinstated for this purpose. For these reasons I do not find the site to have any significant social or recreational value.
9. Despite this, the absence of development on the site and the presence of boundary trees and vegetation, contribute positively to the character and appearance of the area. In particular the site reads as part of a continuation of the open and verdant character which runs along the northern side of Darwell Close, and which provides a visual break between the two areas of residential development on Darwell Close and Newts Way and part of their landscape setting.
10. Both Appeal A and Appeal B would result in the introduction of a substantial built form along the northern side of the site which would divide the appeal site from the neighbouring playground and sit centrally among the belt of green and open space. This would be in stark contrast with, and appear incongruous with the open and verdant character. In this respect, and given the scale and continuous width of the built form proposed across the site, the harm to the character of the immediate area in both cases would be substantial.
11. The remaining southern part of the site would remain predominantly free of development to provide garden space, and boundary treatments could be adequately controlled by condition to retain a sense of openness. This space would inevitably become residential in its character, however low level

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<sup>1</sup> Hastings Borough Council ref HS/DS/88/01079

paraphernalia on this space would not significantly detract from its open character. The retention of this open space as gardens, however, would not mitigate for the harm arising from the new buildings to the northern edge.

*Character and Appearance- Siting and Form*

12. The surrounding residential development comprises predominately two storey buildings. While there is some variation in the heights of buildings, I observed that those taller buildings predominantly respond to the gradients of the land around the valley, for example in the case of the houses immediately to the south of the appeal site, and this contributes to the appreciation of the valley shape. By contrast, the appeal site occupies predominately flat ground at the foot of the valley. The height of both proposals would extend beyond the prevailing building heights of the surrounding area and would confuse and fail to respect the valley's natural topography.
13. The appellant refers to a nearby permission for 210 homes nearby<sup>2</sup> and I note that scheme includes blocks of flats up to 3 storeys. However, in the absence of details of their design and location on that site in relation to the ground levels, I cannot be certain that their circumstances are similar to the appeal schemes.
14. The effects of the height of both proposals, and their effects on the local character would be accentuated by the treatments of the eastern flank ends which sit close to the edge of Newts Way and would be highly prominent in views along Darwell Close. This is slightly less so with Appeal A, where the eastern end of the building would be lower and incorporate a green wall. However, it would still result in the building appearing visually prominent and imposing on the street, particularly given the balcony above. In localised views both proposals would appear in stark contrast with the character of the lower part of the valley. While proposed planting would assist in softening the stark contrast of the buildings with the surrounding trees, this would not sufficiently reduce the visual impacts of the proposal given its scale and proximity to the eastern boundary.
15. Given the presence of other flank walls close to the edge of the highway around the surrounding area, and varied orientations of buildings around the cul de sacs, I do not find the orientation of the proposed buildings in themselves to amount to visual harm. However, this does not mitigate for, nor reduce the harms described above.

*Character and Appearance- Design Approach*

16. Appeal A could provide an interesting and innovative design of high quality, subject to its final detailing and finishes. However, its angular forms, including substantial flat roofs and window proportions, would fail to respect the prevailing attributes of the surrounding development which contribute positively to the character of the area. While new development does not need to replicate local design, and I recognise this is not the appellant's intention, there is nonetheless a policy requirement that development is sympathetic to local character including the built environment. In the case of Appeal A, it is not clear how the local character has informed the building design.

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<sup>2</sup> LPA ref HS/OA/15/00168

17. Turning to Appeal B, while the concept of fishing huts is respectful of the coastal town's heritage, the site is nonetheless some distance from the sea and surrounded by a more traditional residential vernacular. Similarly, to Appeal A, while a contemporary approach is not opposed, it is not clear how the site's context has informed the chosen design approach and as a result of its form, scale and design, it would contrast heavily with the appearance of the surrounding area.
18. I note the comments of a Design Review Panel (DRP) and of a prominent architect and their support of the scheme. While supporting the development in principle, the DRP comments of 20 May 2021 state that a thorough contextual analysis should be carried out to create architecture that is either sensitive to, or related to, the prevailing architectural character of the area. Additional drawings extending further beyond the edges of the site to indicate other buildings and landscape in the vicinity, as well as long site sections, were also recommended to help demonstrate how the proposal relates to surrounding properties, topography of the site and surrounding context.
19. While it may be the intention to create development that is visually distinct to those surrounding forms, the site nonetheless lies in close proximity to existing residential development, and would appear as part of its setting and context, rather than being entirely separate. Neither is there convincing evidence to suggest that the site should be one to support a landmark building. On the basis of the evidence, the design of Appeal B would cause harm to the character and appearance of the area.

#### *Character and Appearance- Trees*

20. There is a substantial oak tree towards the front of the playground to the north. While it does not have a Tree Preservation Order, that tree is substantial in its size with a vast canopy which extends above the height of many others in the surrounding area. The appellant acknowledges the Oak as a category A tree and it makes a positive and significant contribution to the visual amenity of the area.
21. The appellant has provided an Arboricultural Impact Assessment and Method Statement (AIA). This considers that, given the ground levels of the appeal site have been altered, the root protection area of the Oak can be adjusted accordingly. Given the difference in the ground levels and nature of the embankment between the appeal site and the Oak, I find this to be reasonable. The canopy of the Oak extends to the edge of the appeal site. Based on the evidence, the proposals would not necessitate heavy pruning nor damage to the Oak, nor increase pressure to prune to the extent that would cause harm to its visual amenity. On this basis I find the effects on the Oak tree to be acceptable.
22. Both Appeals A and B would require the removal of a group of hazel trees situated at the northern front edge of the site. These have been identified by the appellant's AIA as category C. While less prominent than the Oak, they nonetheless contribute in part to the verdant character of the area due to their position on the embankment. Both appeals would entail development or hard surfacing located close to the northern and eastern site boundaries and there would be very little space for any meaningful replacement landscaping on these boundaries. The schemes would rely heavily on the retention of planting beyond the northern site boundary to retain a vegetated character on the

northern side of the site. As such, I find that the removal of the groups of trees on the site and the absence of a suitable replacement, would add further to the harm arising to the character and appearance of the area from both Appeal A and Appeal B.

#### *Character and Appearance- Conclusion*

23. In conclusion on this main issue, for the reasons given above both Appeal A and Appeal B would cause harm to the character and appearance of the area. They would conflict with Policy DM1 of the Hastings Local Plan: Development Management Plan 2015 (the DMP) which requires development to protect and enhance local character and show appreciation for certain attributes of the surrounding neighbourhood. There would also be conflict with the National Planning Policy Framework (the Framework) insofar as it states developments should be sympathetic to local character and history, including the surrounding built environment and landscape setting, and with the National Design Guide and its objectives relating to integration of new development with local and wider context.
24. I do not find conflict with Policy HN10 of the DMP which relates to open spaces used and/or managed by the local community, given this does not appear to be the case here. In the absence of evidence to the contrary I do not find conflict with EN8 of the Hastings Local Plan: The Hastings Planning Strategy 2014 (the HPS) which relates to the implementation of the Parks and Open Spaces Strategy.

#### *Standard of Accommodation*

25. In both Appeals A and B, the reasons for refusal refer to existing mature trees having a harmful impact on the amenities of the proposed dwellings, although it is not clear which trees and windows the concern relates. In the case of Appeal A, given the scale of the dwelling proposed, its internal layout and the abundance of windows which do not directly face onto nearby trees, the proximity of nearby trees would not create an unacceptable standard of accommodation for future occupiers in terms of overshadowing.
26. In the case of Appeal B, the proximity of trees to the northern and western site boundaries could severely reduce the amount of daylight received by the north and west facing windows of the development, particularly those at the lower levels. The proposal would include habitable rooms at the ground and first floor level, including a bedroom, study, kitchen/dining rooms and home schooling rooms, which would have a reasonable expectation of good daylighting and which would be served only by north facing windows. There is insufficient evidence to demonstrate that those windows, and consequently the rooms that they serve, would receive an acceptable level of daylight. As a result they would feel dark and oppressive to their future occupiers and result in an unacceptable standard of accommodation. In this respect, Appeal B would not contravene any of the criteria set out in Policy DM3 of the DMP, however, it would conflict with the objectives of the Framework relating to healthy living conditions.
27. Under Appeal B, a single shared garden space is proposed to serve all new dwellings. While three of the proposed homes are shown to comprise two bedrooms, they nonetheless include home schooling rooms, study and work from home spaces. As such it is reasonable to assume these units could be

occupied by families. Policy DM3 of the DMP states that the Council expect to see private garden spaces for those units, of at least 10 meters in length. Given their limited size, the proposed balconies would not provide a suitable provision for families. The appellant considers a shared garden arrangement may be more suitable for multi-generational living and I accept that this would be a matter of preference for future occupiers. Given the nature of the site, and as it could be easily subdivided if required, a condition could be used to adequately secure details of the final garden arrangements. Appeal B is therefore acceptable in terms of its provision of outdoor amenity space.

#### *Living Conditions of Neighbouring Occupiers*

28. The site adjoins properties on The Sedges to the south, which are detached, family sized properties set on higher ground. These properties have rear gardens which extend towards the appeal site and a significant number of windows, including habitable room windows, across their rear elevations. These currently have a predominantly uninterrupted outlook and a high level of privacy as a result of the absence of development on the appeal site.
29. The proposals would undoubtedly have some effects on the rear of these properties through the introduction of private gardens, raised balconies and habitable room windows in their south facing elevations. In the case of Appeal B, these features would serve four properties and the site would have a greater number of new occupants.
30. Despite this, the distances between the new windows and balconies of the proposals and the windows of properties on The Sedges would be such that an acceptable level of privacy would be maintained. The proposed gardens would be in close proximity to the existing gardens of those on The Sedges, and the difference in the ground levels may cause a degree of intervisibility between the two. However, the existence of adjoining gardens is a common feature in a residential environment and within the area surrounding the appeal site. Appropriate boundary treatments could reasonably be secured by condition to help restrict intervisibility and the relationships of the gardens would not cause unacceptable harm to privacy. Overall, while there would be a change to privacy levels and outlook of the properties on The Sedges arising from both proposals, I do not consider this would cause unacceptable harm to the living conditions of those occupants. Given the distances involved to other properties on The Sedges, I do not consider their living conditions would be unacceptably affected. Any illegal behaviour of future occupants of the proposals would be a matter for the police.
31. Insofar as this main issue is concerned, for the reasons given, both Appeal A and Appeal B would have acceptable effects on the living conditions of the occupants of those neighbouring properties on The Sedges. The proposal would comply with Policy DM3 of the DMP which requires development to achieve a good living standard for its neighbours, and the objectives of the Framework in respect of healthy living conditions.

#### *Biodiversity*

32. The site lies close to the Wishing Tree Local Wildlife Site. Policy EN6 of the HPS states that development proposals within or adjacent to Local Wildlife Sites will only be permitted where there is a local need which outweighs any harm to the nature conservation interest.

33. The Officer's report finds the proposal would result in the irreplaceable loss of valuable green space, but also finds that the site does not provide unique habitat. Its value instead comes from providing a green link. While third parties comment on protected species near the site, there is not substantive evidence which would lead me to disagree with the appellant's findings and officer's report on this matter. On the basis of the evidence before me including details of how green links could be reinstated elsewhere on the site, I do not find the proposal would cause harm in terms of nature conservation interests, subject to works and enhancements which could reasonably be secured by condition. In conclusion on this main issue, I do not find harm arising to ecology from either Appeal A or Appeal B. The proposal would comply with policies EN3 and EN6 of the HPS and Policy HN8 of the DMP insofar as they relate to biodiversity interests.

*Highway Safety- Appeal B only*

34. Appeal B proposes four parking spaces to serve four houses. One of the proposed houses would comprise 3 bedrooms and as such, the County Council's parking guidance seeks two spaces for that unit. As a result the proposal falls short of one parking space.

35. I observed that there are few parking restrictions in the surrounding area, and there were several places available for cars to park on Darwell Close and the surrounding roads, without needing to park close to junctions or blocking visibility. While I appreciate this was only a snap shot in time, there is not substantive evidence to suggest that this is not characteristic of other times of day. Overall, I am satisfied that the shortfall of one parking space is acceptable and, even if that space needed to be found elsewhere in the area, it need not cause harm to highway safety.

36. Conflict with Policy DM4 of the DMP arises as Appeal B would not comply with the parking standard. However, there are material considerations in this particular case, as set out, which would provide reason for my conclusion on this main issue to be other than in accordance with the development plan. I do not find conflict with the Framework insofar as it relates to highway safety.

**Planning Balance**

37. The Council accept that it cannot demonstrate a five year housing land supply and it is alleged that the delivery of housing is substantially below the housing requirement over the previous three years. As such, the provisions of paragraph 11d) of the Framework are relevant to both appeals. This states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

*Planning Balance- Appeal A*

38. In terms of Appeal A, there would be adverse impacts arising to the character and appearance of the area through the loss of open space, the siting and form of the proposal and its design approach. The effects of this harm would be significant and long lasting and be in conflict with the Framework. I ascribe this harm substantial weight.

39. Appeal A would deliver a number of benefits. In considering these I have had regard to all the evidence before me, including letters in support of the

proposal and petition. These emphasise among other things, the development's environmental and sustainability credentials and design attributes including its wheelchair accessibility and Secure by Design principles. I have also had regard to the comments of the DRP, who's comments relate to Appeal B, but many of the benefits they acknowledge would also apply to Appeal A.

40. The proposal would make a contribution towards the national objective to boost the supply of homes, as well as contributing to the local housing stock in the context of an absence of a housing land supply and under delivery of housing. The proposal would be delivered on a small site, which is one which the Framework acknowledges can make an important contribution to meeting the housing requirement of an area, and can often be built-out relatively quickly. It would be within an existing built-up area and with good accessibility to nearby services and facilities including public transport.
41. The proposal would provide a family home which would be fully wheelchair accessible and provide a good standard of accommodation for its future occupants which could include less able-bodied individuals or the elderly, in turn helping to address an identified local need and alleged undersupply. Its layout and accessibility would support multi-generational living and include spaces for home working in response to recent working trends. While there is not substantial detail of how it would be achieved, the new house could have excellent sustainability credentials and have the ability to achieve a zero-carbon status. It would also be capable of delivering biodiversity and ecological enhancements and would generate economic benefits through the creation of construction jobs as well as ongoing expenditure into the local economy by future occupants.
42. While the proposal would give the opportunity to tidy the existing site, given the visual harm which I have found from the scheme, I do not ascribe weight to the alleged visual enhancement of the site. Where the proposal may be policy compliant in other respects, for example relating to flooding, drainage and parking, these are neutral matters and do not weigh in favour of the development. As Council Tax payments would be used to pay for services required by new occupants this does also not amount to a benefit. Reference is made to 'meanwhile projects' and a programme of working with local artists and diverse local communities, as well as children and young people to deliver the proposal. While this may be the case, in the absence of further details or a mechanism to secure this, I similarly do not afford it weight in favour of the proposal for planning purposes. The proposal may give the opportunity to help control anti-social behaviour on the site, however other options could be available to achieve this.
43. While the benefits of Appeal A are plentiful, the weight of these benefits is nonetheless limited by the scale of the development proposed, which is a single house. Taken together, I ascribe these benefits moderate weight, given the scale of the proposal. Furthermore, based on the evidence, it is not apparent that the harms arising from the proposal are necessary to secure the benefits in this instance.
44. In conclusion, for the reasons given, I find that in the case of Appeal A the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. As such, the proposal does not benefit from the presumption in favour of sustainable development.

*Planning Balance- Appeal B*

45. Turning to Appeal B, adverse impacts would arise to the character and appearance of the area through the loss of open space, the siting and form of the proposal and its design approach. The proposal would create unacceptable living conditions for future occupants in terms of the natural lighting received by the north facing rooms on the lower levels. Each of these effects would be significant and long lasting, and would be in conflict with the Framework. As such I give them substantial weight.
46. In considering the benefits of Appeal B, I have again had regard to the comments in support of the proposal including those who signed the petition in favour. The proposal would contribute four houses to the national objective to boost the supply of homes, similarly on a site whose size is acknowledged by the Framework as one which can make an important contribution to meeting the local requirement, and within an established built up area with good accessibility to services and facilities including public transport. The proposal would provide family homes which would be suitable for and support multigenerational living, particularly as the outdoor space could easily be adapted accordingly. They would also meet adaptable and accessible standards of building regulations, and be of a housing type with an identified local need, with internal working spaces intended to respond to changing working practices. In addition, the proposal would generate economic benefits through the creation of construction jobs as well as ongoing expenditure into the local economy by future occupants.
47. Again, while there is not detailed evidence as to how it would be achieved, I see no reason why the houses could not achieve a zero-carbon status and encompass excellent energy usage and efficiency credentials as alleged. The wider site could also deliver ecological and biodiversity enhancements.
48. Given the significant harm I have found in respect of the visual effects of the proposal, I do not consider the proposal would amount to an enhancement of the appearance of the site. While the proposal may help to reduce anti-social behaviour, fly-tipping and trespassing on the site, I am not satisfied the appeal scheme would be necessary to achieve such a benefit. For the reasons set out above, I do not ascribe weight to increased Council Tax receipts or other policy compliant attributes of the proposal as matters weighing in favour of the development.
49. Considering these matters as a whole, the weight I ascribe to these benefits remains limited by the relatively small scale of the development and the quantum of homes proposed. In addition, it has not been demonstrated that many of these benefits are specific to the development before me, and could not be achieved through less harmful means. Considered cumulatively, I ascribe the benefits of the proposal moderate weight.
50. It follows that the adverse impacts of granting planning permission which I have identified, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, Appeal B does not benefit from the presumption in favour of sustainable development set out in the Framework.
51. In reaching these conclusions I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which

sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. It does not follow from the PSED that the appeals should succeed and wider planning considerations are paramount. Nevertheless, the benefits of the proposals to those with protected characteristics is discussed above, and are matters to which I have afforded weight in favour of the development, alongside other benefits.

### **Conclusion**

52. With the above in mind, there are no material considerations, including the approach of the Framework, that are worthy of sufficient weight that would indicate decisions other than in accordance with the development plan.

53. Appeal A and Appeal B are dismissed.

*C Shearing*

INSPECTOR