

# Appeal Decision

Site visit made on 12 August 2024

**by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 September 2024**

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**Appeal Ref: APP/P1425/W/24/3339434**

**Land adjacent to Barley Cottage, North of The Highway, Newhaven, East Sussex BN9 9TN**

- 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 Mr Hamish Page against the decision of Lewes District Council.
  - The application Ref. is LW/23/0384.
  - The development proposed is the erection of 3 No. detached dwellinghouses and associated car parking.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are (i) the appropriateness of the location for residential development including its effect on the rural character and appearance of the area, and (ii) the effect on habitats and biodiversity.

## Reasons

3. On the first issue, the Officer's Report describes the location, character and appearance of the appeal site and its setting in some detail. These details are significant in informing my approach to, and decision on, the appeal scheme, although I have also had regard to the 'site and setting' descriptions in the appellant's Design and Access Statement June 2023 and the Appeal Statement LW/23/0384 February 2024.
  4. The information in all three documents and from the other evidence in the appeal is necessarily based on the fact that the application is for full permission as opposed to outline with one or more matters reserved. However, it is less the details of the appeal scheme that are the deciding factor and rather more the fact that there is an issue of principle as to whether the appeal site is an acceptable location for housing.
  5. The site is outside the policy settlement boundary for Lewes District as identified in Policy DM1 of the Local District Local Plan Part 2 & Policy H1 of the Newhaven Neighbourhood Plan. It forms a small part of the 'green buffer' between the settlements of Newhaven to the east and Peacehaven to the west. In addition to preventing the coalescence of these two towns, the green buffer connects the cliff top environment to the south with the South Downs National Park to the north.
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6. Having regard to the above-mentioned policies, residential development on the appeal site would be precluded in principle on the basis that the three proposed dwellings have no need for a countryside location. However, as the appellant and Council are aware, the failure of the Council to demonstrate a 5-year housing land supply in Lewes District means that the 'tilted balance' approach in paragraph 11 of the National Planning Policy Framework December 2023 ('the Framework') is now the basis for decision-making.
7. The effect of this is that the appeal site's location just outside the Newhaven settlement boundary is in itself no longer a sufficient reason to refuse permission. However, development plan policies remain relevant as do other paragraphs of the Framework. In addition, there is the Council's Interim Policy Statement for Housing Delivery ('the IPSHD') which sets out eight criteria that residential development proposals need to satisfy if they are to be approved.
8. The context in which I apply these considerations is one of a judgement of the role of the green buffer in the proper planning of the area. From all that I have seen and read this is an area that, whilst having succumbed to some limited examples of sporadic development during the decades following the post war introduction of planning control, remains an important strategic and visual gap between the suburban sprawl of Newhaven and Peacehaven.
9. Furthermore, I agree with the Council's view that the importance of the gap is given further weight by its remaining predominantly rural character and the quality of a landscape that provides a setting for the cliff top environment to the south and the South Downs to the north. Accordingly, I am of the view that because it comprises a site of sufficient size for three detached two storey dwellings and a long access drive from Ringmer Road for two of them, the appeal scheme's effect on the green buffer and the rural character of the area would inevitably be such that it fails to sufficiently comply with the IPSHD as regards criteria nos. 4 and 7 - coalescence of settlements and response to existing character respectively. Clearly in itself the development represents only a minor degree of coalescence, but it is inconsistent with other nearby application decisions, including at appeal, and would no doubt be quoted as a precedent for the favourable consideration of future applications.
10. It is not entirely inconceivable that at some point in the future the housing need in the District may be such that development plan policies may have to accept an element of residential incursion into the green buffer as part of the outcome of a comprehensive review of land availability and an examination of the pros and cons of potential sites that form part of the due process of Local Plan-making. I acknowledge that this is not currently feasible and that the whole point of Framework paragraph 11 nationally and the IPSHD locally is to provide an interim process to facilitate ongoing housing supply.
11. However, even after taking this into account, the IPSHD represents a high bar and it would appear that when applied to this site and the green buffer itself this is too high to reach. The officer's comment that *'the general principle of development of the site may be acceptable but only if it can be demonstrated that the development would not be isolated, either physically or culturally and that it would not harm the overall character of the area'* may in practice be a contradiction in terms. It may also have given a false hope of a successful application without there being a realistic prospect of success.

12. This is because, and as the Council's evidence effectively argues, the appeal scheme would self-evidently be an example of an ad hoc development of a sporadic nature that would compromise the clearly defined settlement boundary on the western side of Newhaven. Moreover, the proposal's details include design and layout features that would be somewhat incongruous in this rural setting, including an overly suburbanising effect on the site and its surroundings. Examples cited by the Council and with which I concur include *'the small gaps between dwellings, uniform arrangement, vertical emphasis in design and the excessive amount of glazing'*.
13. Overall on this issue, I find that although of a modest size relative to the green buffer as a whole, the appeal site would be an inappropriate location for residential development that would have an adverse effect on the rural character and appearance of the area. This would be in harmful conflict with Policies CP2, CP10 & CP11 of the Local Plan Part 1; Policies DM25, DM27 & DM35 of the Local Plan Part 2 and with a number of elements of Government policy in the Framework's Section 12: 'Achieving Well-Designed and Beautiful Places' and Section 15: 'Conserving and Enhancing the Natural Environment'.
14. Turning more briefly to the second main issue of the effect of the proposed development on habitats and biodiversity, the Council's objection has had regard to the site clearance and deposit of aggregate on the site prior to ecological and arboricultural appraisals. From observations on my visit to the site and its surroundings, I am also minded to agree with the Council's view that prior to its clearance the site was more one of providing a woodland than a scrub habitat.
15. Whilst a Preliminary Ecological Appraisal has now been submitted this has come too late to preserve much of the ecological interest and rural character that was initially present. There are additionally inconsistencies in this regard with the dwellings' roof design and the presence of domestic gardens as outlined in the Council's evidence. The appeal scheme as currently presented would therefore fail to satisfy the Council's Technical Advice Note of February 2021 and in turn criterion no. 6 of the IPSHD as regards mitigating the adverse effects on the biodiversity of the appeal site. There would also be non-compliance with Policy CP10 of the Local Plan Part 1; Policy DM24 of the Local Plan Part 2 and with paragraphs 8 and 124 of the Framework.
16. With all that said, I have taken account of the appellant's comments on the timeline for the requirement of Biodiversity Net Gain and their agreement to a pre-commencement condition. This could provide the opportunity for the development to proceed without causing further harm to the ecology of the site and its surroundings and also comprise some redress for the harm already caused. However in the event, my finding on the first main issue does not allow the appellant the opportunity to meet the threshold of ecological requirements for development.

### **Other Matters**

17. Local residents have commented on the appeal application, mostly in opposition but with a couple in support. I have taken these views into account in making my decision, but for the most part the views expressed reflect those of the Council rather than raise additional issues.

18. In the event of the appeal being allowed, the Government's online Planning Practice Guidance says that a planning obligation under Section 106 of the Town and Country Planning Act 1990 should normally be completed prior to the grant of permission and exceptions rarely made. An obligation has not been submitted in respect of formalising the self-build status of the application and if my assessment of the development had weighed in the appellant's favour the absence of this would be likely to have precluded the appeal being allowed. An obligation may also be needed for biodiversity, although this could be obviated by the suggested pre-commencement condition.

### **Planning Balance and Conclusion**

19. The appeal scheme would have the advantage of providing three additional family homes with their attendant social and economic benefits. I also acknowledge that in a number of other respects the Council has found the development details to be acceptable, including sustainable building practices. The development would also help to meet the local demand for self-build sites.
20. However, I have also concluded that the development would result in the unacceptable incremental erosion of the green buffer between Newhaven and Peacehaven whilst at the same time causing harm to the rural character of the area and to some extent its ecological value.
21. As previously mentioned, because the Council has a shortfall of housing supply the tilted balance in paragraph 11 and footnote 8 of the Framework applies. In this case, whilst the relevant policies must be considered as being out of date I find that permission should not be granted because under paragraph 11 d) ii. This is because the adverse impact of the appeal scheme in this green buffer location would significantly and demonstrably outweigh the benefit of the increase of three dwellings to the District's housing supply, when assessed against the policies in the Framework taken as a whole.
22. The appeal is dismissed accordingly.

*Martin Andrews*

INSPECTOR