



Appeal Decisions

Inquiry held on 19 July - 22 July 2022 and 4 August 2022

Site visit made on 21 July 2022

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2022

Appeal A Ref: APP/Y9507/W/21/3269823

Astley House, Spital Road, Lewes, BN7 1PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Kitewood (Astley Heights) Limited against the decision of South Downs National Park Authority.
- The application Ref SDNP/19/05619/FUL is dated 20 November 2019.
- The development proposed is demolition of the vacant building and the construction of 28 residential units with associated landscaping and on-site car parking.

Appeal B Ref: APP/Y9507/W/22/3295783

Astley House, Spital Road, Lewes, BN7 1PW

- 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 Kitewood (Astley Heights) Limited against the decision of South Downs National Park Authority.
 - The application Ref SDNP/21/04044/FUL, dated 2 August 2021, was refused by notice dated 2 November 2021.
 - The development proposed is demolition of the vacant building and the construction of 28 residential units with associated landscaping and on-site car parking.
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Decisions

1. Appeal A is dismissed and planning permission is refused for demolition of the vacant building and the construction of 28 residential units with associated landscaping and on-site car parking at Astley House, Spital Road, Lewes, BN7 1PW, in accordance with the terms of application Ref SDNP/19/05619/FUL, dated 20 November 2019.
2. Appeal B is dismissed.

Preliminary Matters

3. The Inquiry was held in person between the 19 July and 22 July 2022, and virtually on the 4 August 2022.
4. Appeal A is made against the failure of the Authority to give notice within the prescribed period of a decision on an application for planning permission. During the course of the appeal the Authority indicated that it would have refused planning permission for the proposal on a number of grounds including the absence of affordable housing provision, the effect on the character and appearance of the area, the housing mix proposed, and highway safety. Although not included within the putative reasons for refusal, the Authority

indicated that its concerns in respect of sustainable construction, drainage and the absence of a planning obligation that were applicable to Appeal B, were also matters that applied to Appeal A.

5. As set out above there are two appeals on this site, for the same number of units, but with differences to the design, including vehicular access into the site. In common however, is an apartment building on the western end of the site with terraced properties fronting both De Montfort and Spital Roads. For the avoidance of doubt, I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
6. During the course of the appeals the Authority adopted The Design Guide as a supplementary planning document on the 18 July 2022. I have had regard to this in these decisions.
7. Two completed and signed Planning Agreements (S106) dated 16 August 2022 were submitted, with agreement, after the close of the Inquiry. They contain no alterations to the version discussed at the Inquiry and are considered further later in these decisions.
8. Concern has been raised about ownership of part of the appeal site not being in the control of the appellant. The correct certificate was completed on the application forms in this regard. Moreover, the granting of planning permission would not permit development on third party land without the necessary agreement having first been obtained.
9. The appeal site is located within the South Downs National Park and as such I have had regard to the statutory purposes and duty for National Parks as specified in the National Parks and Access to the Countryside Act 1949 as amended by the Environment Act 1995.

Main Issues

10. The main issues in both appeals are:

- the effect of the proposed development on the character and appearance of the area, including the setting of the Lewes Conservation Area (CA);
- the effect on the living conditions of nearby occupiers with regard to car parking provision and the design of the proposed development, and the intended future occupiers in respect of internal space standards and external amenity space;
- whether or not the mix of housing proposed reflects local need;
- whether the absence of affordable housing is consistent with the development plan;
- the effect on highway safety including pedestrians, with particular regard to off street parking provision, space within the site for vehicles to manoeuvre and access arrangements;
- whether or not the residential units could be sustainably constructed;
- whether or not the site could be suitably drained and

- whether the contributions sought in respect of a Travel Plan Statement Audit Fee and a Traffic Regulation Order in respect of re-locating on-street parking bays are reasonable and necessary to make the development acceptable.

Reasons

Character and Appearance

11. The appeal site is located within the settlement of Lewes and is allocated for housing under Policy PL1 B of the Lewes Town Council Neighbourhood Plan 2015 – 2033 (Made 11 April 2019) (LNP). The supporting text within the LNP for the site indicates that the expected number of dwellings that could be delivered on it is 25.
12. Located in a prominent position, enclosed by Spital Road, De Montfort Road and Nevill Road with elevated open space opposite its western end, the appeal site is identified as 'a gateway' from the town into the surrounding countryside.
13. The site comprises a large brick building, latterly occupied by the Police as offices/stores, areas of hardsurfacing, with a vehicular access on to Spital Road. At its western end is an area of landscaping, upon which are two semi-mature hornbeams and a smaller willow, enclosed by a low wall. At the eastern end of the site adjoining De Montfort Road is another area of landscaping upon which are a number of trees. The site rises from east to west and the houses on the northern side of De Montfort Road are at a lower level than the buildings on the appeal site.
14. The site is located outside of, but adjacent to the boundary of the Lewes Conservation Area (CA), within which, and in close proximity to the appeal site are a number of buildings of townscape merit (BTM), including No 117 Western Road. Given this close relationship both physically and visually I consider that the appeal site is within the setting of the CA, a designated heritage asset, and also the setting of nearby BTM, which are non-designated heritage assets.
15. The CA covers much of the town and its historic core and is separated into character areas. Its significance derives from its historical and architectural interest and its Downland setting. The domestic scale of buildings, the varied roof designs and architectural styles and variety of building materials all contribute to the significance of the CA, along with the focal point of Lewes Castle. Of relevance to the context of the appeal site are character areas 4.2 Upper High Street and Western Road, and 6.2 The Wallands. Each of these areas are residential in character, with well-preserved terraced properties being the predominant form of development, set close to the back edge of the pavement with the ridge line running parallel to the road. In the locality of the appeal site development comprises 2 and 2.5 storey modest properties, largely dating from the 19th century. There is a small element of 3 storey development on Western Road. Whilst there is a variety of architectural styles nearby, there is a simplicity of details and materials which provides a cohesive appearance.
16. The existing building on the site does not reflect the character or appearance of the CA, given its form, design and use, however, it has a largely neutral effect on its significance.
17. Although of different designs, the apartment building in both appeals would have accommodation over 3 floors. It would be located closer to Nevill Road than the existing building on the site. This, along with the design approach

adopted and the resultant scale and bulk of the building in both appeals would result in an imposing, overbearing feature in the street scene, presenting an uncharacteristic expanse of gable frontage. It would be much higher than the domestic scale of properties nearby and would result in a prominent, dominant feature in the street scene, at this gateway site, which would significantly detract from the character and appearance of this part of Lewes.

18. The terraced form of the new houses reflects the character of the area. However, the differing designs across the site and use of large windows throughout the dwellings would not respect or reflect the architectural cohesiveness in the locality. The mansard style dwellings with limited recess at second floor level would appear alien in the street scene and the dwellings would appear as top-heavy, in stark contrast to the largely recessed, modestly sized dormer windows that characterise the area. Furthermore, the gable fronted dwellings would be overly vertical in appearance which would be in stark contrast to the otherwise horizontal emphasis that nearby properties display.
19. Both appeal proposals would result in the removal of the trees on the appeal site. Whilst street trees are not a feature of the wider area, the ones on the appeal site serve to soften the built form of this part of the town and those at the site's western end connect it with the open space on the opposite side of Nevill Road and countryside beyond. In this respect they contribute to the transition of this gateway site from town to country. Although both schemes would see more landscaping on the site than is currently present, such planting would take a considerable time to mature and have a similar effect to the existing vegetation. Accordingly, the loss of the trees would have a harmful effect upon the appearance of the area.
20. The proposed schemes would be visible from within the CA and their incongruous design and scale of the apartment building would be stark and apparent. Both schemes would significantly detract from the domestic scale of development within the CA and the architectural cohesiveness that characterises it. Moreover, the proposal in Appeal A would obscure the tile hung wall of No 117 Western Road. This would have a harmful effect on the significance of this heritage asset, through harmful development within its setting.
21. From the open space opposite the appeal site and beyond, and from The Gallops, there are far reaching views of the town, including its roofscape and prominent buildings, much of which is located within the CA, including Lewes Castle and the spire of St Anne's Church which are both listed buildings. Mindful of the statutory duty imposed by Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Act), I acknowledge that the proposals on the site would, from certain points, obscure some of the views of the town from this area. However, from other points, and particularly from higher ground, the far-reaching views would remain. Overall, the proposals would have a negligible effect on views of the town and of listed buildings. Accordingly, the proposals would preserve the setting of the listed buildings known as St Anne's Church and Lewes Castle, in accordance with the statutory duty imposed by the Act.
22. Notwithstanding my findings in respect of views, I conclude that in both appeals the proposals would result in significant harm to the character and

appearance of the area. Paragraph 200 of the National Planning Policy Framework (Framework) makes it clear that the significance of a designated heritage asset, which in this case is the Lewes CA, can be harmed by development within its setting. The development of the site as proposed, would, given my findings, have a harmful effect on the setting of the CA and its significance. In Appeal A, the proposal would also be harmful to the setting of No 117 Western Road and its significance as a non-designated heritage asset. The proposals therefore conflict with Policies SD4, SD5, SD12, SD15 and SD25 of the South Downs Local Plan adopted 2 July 2019 (2014-33) (SDLP), and Policies PL1 B, PL2 and HC3 A of the LNP which collectively seek for development to respect the landscape and local character through high quality design, safeguarding heritage assets and their setting. There is also conflict in both appeals with the National Park's First Purpose to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.

23. Paragraph 200 of the Framework specifies the need for clear and convincing justification for any development that would cause harm to the significance of a designated heritage asset, however slight the harm and whether through direct physical impact or by change to its setting. Paragraph 202 requires that where less than substantial harm occurs, as in this case, it should be weighed against the public benefits of the proposal. These are considered later in my decisions.

Living conditions

Nearby Occupiers

24. In both appeals a communal terrace would be provided above the car parking area. This would be elevated above the street level of both De Montfort Road and Spital Road. In addition, the flats would each have a terraced area, with those on the first and second floor of the apartment building being elevated above the streets also.
25. The elevated terraces would be located in close proximity to the dwellings facing towards the appeal site in De Montfort Road. Whilst they would be enclosed, it is likely that users of them would have clear views into the first floor windows of the dwellings opposite when sitting or standing on them. This would result in a loss of privacy to the occupiers of Barn Stables and Nos 93, 95 and 97 De Montfort Road. Moreover, given the size of the roof terraces in Appeal A for Units A6, H1, A8, the communal terrace, and to a lesser degree that proposed at Unit A7 it is likely that their use, particularly on summer days and evenings when the occupiers are entertaining friends and family that noise and disturbance to nearby occupiers may result, possibly late at night. The same scenario would occur as a result of the use of the terraces proposed for Units A5, H1, A8 and the communal terrace in Appeal B.
26. I note the suggestion that privacy screens would be used to enclose the areas, however in order to prevent a loss of privacy, such screens would need to be much higher than those shown on the submitted drawings to mitigate the harm identified. Although landscaping would reduce direct overlooking from the terrace areas, this would take a considerable time to mature to have any recognisable effect on providing an impenetrable barrier between the terraces and nearby properties. Moreover, the use of such measures would be unlikely to reduce noise and disturbance from gatherings on the terraces.

27. The development of the appeal site would undoubtedly change the outlook from the front of dwellings in nearby roads. However, compared to the existing situation of a tall building mass and given the scale and design of the units proposed, they would not be overbearing or intrusive to the degree that would be harmful to nearby residents' living conditions.
28. Some of the units on the appeal site would be taller than the existing building but the majority would be lower in height. Mindful of this and whilst acknowledging that the units would be located to the south of dwellings on De Montfort Road it is unlikely that either scheme would result in a reduction of daylight or sunlight to nearby properties over the existing situation. It is noteworthy that the Authority did not raise this matter as a concern. Nearby occupiers' living conditions would not be harmed in this regard by the proposed developments.
29. I acknowledge that on-street car parking within the area is at a premium, and local residents' concerns about the effect of the proposal on this. This issue will be assessed further below.
30. Whilst I have found that harm to the living conditions of nearby occupiers would not be caused in terms of outlook, daylight/sunlight or parking, they would be harmed by the use of the terraces, and this would be in conflict with SDLP Policy SD5 and LNP Policy PL1 B which seek development to have regard to avoiding harmful impact upon any surrounding uses and amenities.

Intended Future Occupiers

31. The new dwellings in each scheme, would, on account of the number bedrooms proposed be suitable for families to live in. The rear gardens serving each of these dwellings would be of limited depth and size. As a consequence, there would be little space within them for garden furniture, washing lines, play equipment and storage buildings, normally associated with family sized dwellings. The gardens would appear cramped and would be unpleasant places to spend time in, compounded by the fact that each would be overlooked from rear first and second floor windows in the new dwellings opposite. They would not be private outdoor areas where the intended occupiers could spend time in. The size of the dwellings proposed does not provide justification for this poor-quality outdoor space.
32. Moreover, whilst noting the tight urban grain in the locality and the difference in levels between the dwellings on Spital Road and De Montfort Road, there would be a loss of privacy to the rear facing windows and bedrooms of the new dwellings on account of the limited separation distance between the dwellings in De Montford Road and Spital Road.
33. I have found that the dwellings in Appeal B to be three bedroom units and on this basis there would be no conflict with the Nationally Described Space Standards (NDSS). In Appeal A, there is no dispute that the proposed 4 bedroom dwellings fail to comply by the NDSS. Whilst acknowledging that the bedrooms are a reasonable size, I find that the open plan living accommodation at ground floor level would be cramped given the likely number of occupiers that would be using it at any one time. This would make the ground floor space an unpleasant place within which to relax as a family.

34. The living conditions that would be provided to the occupiers of the new apartments would be satisfactory, save for the intended future occupiers of Unit 7 in Appeal B. These occupiers would have no privacy when using their terrace on account of the close proximity of glazed doors in unit 8 serving the kitchen/dining/living space which would face directly onto it. This is the only outdoor space associated with Unit 7. I have considered whether a planning condition could be used to mitigate this harm, but whilst this may address the privacy of the terrace, it would be likely to have an adverse effect on the living conditions of the occupiers of Unit 8.
35. I conclude that for the above reasons that the appeal proposals would provide a poor standard of living conditions for the intended future occupiers, which would conflict with the amenity objectives of SDLP Policy SD5 and LNP Policy PL2 which require that development has regard to the design principles including amenity, and that residential development meets the NDSS. There would also be conflict with the residential amenity objectives of The Design Guide.

Mix of Housing

36. Both appeal schemes propose a mix of dwelling sizes. Appeal A proposes 3 one bed units, 7 two bed units, 3 three bed units and 15 four bed units. Appeal B proposes the same number of one and two bed units and 18 three bed units.
37. There is no dispute that the housing mix proposed in Appeal A conflicts with the percentage provision set out in SDLP Policy SD27 which seeks to provide a mix of homes that reflects the need and community aspiration for small and medium sized homes. Moreover, given the high number of four-bedroom homes proposed, compared to the low number of one, two and three bed units proposed, a broad mix of housing size is not achieved. Having regard to these matters and that there was an over provision of four-bed units in 2020/21¹, I find that the mix proposed would conflict with the aims of Policy SD27 of the SDLP and LNP Policy PL1 A which seek to deliver a balanced mix of housing to meet local need.
38. The mix proposed in Appeal B also conflicts with the percentage provision set out in Policy SD27, particularly in terms of the provision of two-bed units (25% provision against policy compliant 40%). However, the policy seeks a broad mix of dwelling sizes, and I consider that the dwelling sizes proposed are small and medium sized dwelling with the one and two bed units being small, and the three bed units being medium. This mix would support the need and community aspirations set out above and also contribute to redressing a policy compliant balance of housing sizes, particularly for three-bed units for which there was a notable undersupply in 2020/2021².
39. The Authority consider that the three-bed units in Appeal B should be classed as four-bed units because the first floor lounge/study shown on the drawings could accommodate a single bed. Whilst noting the supporting text at paragraph 7.38 of the SDLP, I consider that there would be a low probability that the lounge/study area would be used as a bedroom because the room is open to the stairs and accordingly there would be no privacy for its occupier. I

¹ South Downs National Park Authority Monitoring Report 01 April 2020 to 31 March 2021 (December 2021)

² South Downs National Park Authority Monitoring Report 01 April 2020 to 31 March 2021 (December 2021)

note that a wall could be constructed by the intended future occupiers of the units where the lounge/study is shown however I am assessing the proposal on the basis of the drawings before me and not what may happen in the future.

40. Accordingly in respect of Appeal B, I conclude that the housing mix proposed complies with SDLP Policy SD27 and LNP Policy PL1 A which seek to deliver a balanced mix of housing to meet local need.

Affordable Housing

41. Given the scale of the proposal, the provision of affordable housing is expected in accordance with Policy SD28 of the SDLP, Policy PL1 A of the LNP and the Affordable Housing Supplementary Planning Document (July 2020). These policies and guidance require a minimum of 50% of new homes created to be affordable homes on-site, with the number of Lewes Low Cost Housing maximised, unless exceptional circumstances exist including that there is viability justification for a different figure.
42. The appellant principally relies on a viability justification when assessing compliance with the development plan and concludes, notwithstanding that Vacant Building Credit can be applied in these cases, that the schemes are not viable to deliver affordable housing. I am cognisant of the Framework and Paragraph 58 which states that the weight to be given to the viability assessment is a matter for the decision maker, having regard to all of the circumstances in the case.
43. In this context and noting that the issues in dispute narrowed during the Inquiry, there remains disputes between viability experts in respect of a number of issues, including the undisclosed cost of the appeal site, whether there is a need for indexation, the gross development value (GDV) for the new houses, amount of profit and professional fees expected. There is no dispute however in respect of the Benchmark Land Value (BLV) being £2,220,000, or the GDV of the new apartments.
44. To support the parties' GDV for the new houses I was referred to numerous sites within Lewes. None of these sites was directly comparable to the appeal site geographically or in terms of the proposed development, however I visited each and my findings are set out below.
45. The development at Bell Lane is a similar distance to the town centre as the appeal site, however the size of the units and the 4 storey design is not comparable to the schemes before me, nor is the outlook on to commercial units. Although there is no dispute in the indexed price set out in Mr Ashdown's Note³, I find that this scheme is not a good comparable to base the GDV of the appeal schemes on.
46. Cuilfail Mews is a small development, located close to the town centre. It is not comparable to the appeal site in terms of scale or location and is not a good example to base the GDV of the proposals' houses upon.
47. The development of Lewes Bus Station had at the time of Inquiry not obtained planning permission. There are no transactions for this site and as such it is difficult to gauge the likely GDV of the units upon it. Moreover, it is in the

³ ID4 Astley House Appeal – Viability Matters Note for the Inspector

centre of town and thus not locationally comparable to the appeal site. It is not a good example to use as a comparison in these cases.

48. Southdowns Park is a much larger development than the appeal schemes, with a higher percentage of apartments over houses. It is located within an attractive location close to a park and views to Malling Down. Local estate agents suggest that values on this site are 10% higher than the appeal scheme because of its location. There is dispute as to whether this figure should be lower, on account of the superior accommodation proposed in the appeal schemes, or higher given the overall scheme layout and car parking at Southdowns Park. No percentage figures have been suggested in these respects.
49. This site is more comparable to the appeal site than the schemes referred to above. As such, taking the 10% price reduction for the appeal site against the sale price achieved on the houses on this site, it is suggested that a price of £484 per sq/ft may reasonably be applied to the houses on the appeal site. The appellant has produced appraisals which indicate that notwithstanding a higher GDV, that the provision of affordable housing on the site, in both appeals, would not be viable. This is irrespective of the indexation that should be applied to construction costs, whether that be quarter 2 as suggested by the Authority, or quarter 3 which is the appellant's preferred approach.
50. Although Styles Field has a similar housing typology to the appeal schemes, it has a superior location, close to the town centre. The appellant contends that a 15 % deduction should therefore be applied on the appeal site, which would support the Authority's valuation figure for the new houses proposed.
51. It is clear that adopting the Authority's approach, which includes fewer professional fees (7%) and less profit sought (17.5%) than the appellant, in addition to the higher value of the new dwellings proposed (£501/sq.ft and £502/sq.ft for the larger houses), that the development of the appeal site would be viable and a policy compliant level of affordable housing could be provided.
52. The appellant justifies the 10% professional fees used by providing a comparison with other sites where viability justification had been produced and that this figure was accepted by the Authority's previous viability experts. The majority of the sites referred to were in London and no information has been provided about the complexity of the development proposed in each case. However, the Authority has provided only one example where its figure was used, at the Lewes Bus Station site. Whilst this site is within a similar geographical context to the appeal site, the limited quantum of evidence provided on this matter does not convince me that the appellant's figure is unduly high or excessive in this case.
53. The profit expectation of the appellant is 18.5% which falls within the 15-20% figure set out within the Planning Practice Guidance (PPG) as a suitable return for developers. Whilst the war in Ukraine and rising prices were not provided as justification of this figure at the time that the application was submitted, I am required to consider the evidence before me at this time. These circumstances, along with the 20% developer return used in the viability assessment undertaken as part of the adoption of the SDLP, and the guidance within the PPG which advises that the plan viability assessment should inform one

submitted with a planning application, lead me to find that the developer return sought is reasonable in this case.

54. I note the Authority's point that the appeal site is allocated for housing and that given its past use it would not be expected to have significant abnormal costs and should be assumed viable to provide affordable homes in accordance with the South Downs Whole Plan and Affordable Housing Viability Study⁴. However, the generalised assumptions in the local plan viability study are area-wide, strategic, and non-site specific.
55. It is clear from the various appraisals that the gap between the Residual Land Value and the BLV narrows depending on the variables that are used. However, at this stage, and on the evidence before me, the developer's return, values and fees that the schemes would not be viable if affordable housing was provided.
56. Notwithstanding my finding in this regard the appellant has indicated that they would undertake a review mechanism in the event that planning permission was granted for the proposals. This would be secured by the submitted S106 Agreements and would allow further viability appraisals to be undertaken to assess whether a development plan conformity of 6 units of affordable housing could be provided on the site. The variables that may be used in subsequent appraisals may well change depending on the market conditions and circumstances at that time. This mechanism would ensure that where financially viable, the much-needed affordable housing would be provided as part of the schemes.
57. Given the above, I conclude that the appellant has demonstrated that the provision of affordable housing within each appeal would be financially unviable in accordance with the relevant policies of the development plan and the English National Parks and the Broads: UK Government Vision and Circular 2010. As a result, the proposal would comply with the requirements of SDLP Policy SD28 and LNP Policy PL1 A.

Highway Safety

58. Spital Road is one of the main routes into Lewes from the west and is covered by a 30 mile per hour speed limit. There are on-street car parking bays on the opposite side of the road to the appeal site and on the same side as the road as it outside Nos 113-117 Western Road. De Montfort Road is covered by a 20 mile per hour speed limit and has parking bays on both sides of the road within the vicinity of the appeal site.
59. Appeal A would see vehicular access points onto De Montfort Road and Spital Road and a one-way system would operate through the site. Appeal B would have a single vehicular access/egress point onto Spital Road. Both appeal schemes include the provision of a pavement on De Montfort Road, dropped kerbs and tactile paving.
60. The vehicular entrance /egress points proposed would be set back from the carriageway and pedestrians walking along the existing and new pavements would have good visibility of vehicles entering or leaving them. The use of tactile paving at the side of the access points would further alert pedestrians of the presence of these points.

⁴ BNP Paribas, 2017

61. In terms of the proposed one-way system in Appeal A, it is likely that the intended future occupiers of the development would familiarise themselves with the access arrangements and adhere to them. Moreover, delivery drivers would be likely to be advised of the arrangements. Signage could be installed within the car park and on the gates identifying the arrangements in place, and I was told that different key fobs could be used which could be programmed to prevent the exit gate onto Spital Road from being opened by somebody within the highway. On this basis there would be a low probability of vehicles waiting within the carriageway of Spital Road causing an obstruction or hazard to other road users.
62. Although the access/egress point in Appeal B is narrower than that set out within the appellant's Transport Report⁵, and acknowledging that a Stage 1 Road Safety Audit (RSA) has not been undertaken, the likelihood of a vehicle entering and exiting the car parking area at the same time would be low, given the number of car parking spaces proposed and the number of vehicle movements associated with them. Moreover, if a vehicle was exiting the site, a vehicle entering it would only be likely to be stationary in the carriageway for a short period of time whilst waiting for the manoeuvre to take place. Such a situation is commonplace in built up environments such as this. The evidence before me does not demonstrate that such a situation would be harmful to highway safety, and any inconvenience to other road users would be momentary.
63. Both schemes propose fewer car parking spaces on site than the number of units proposed; Appeal A shows 23 spaces; Appeal B, 24. It is submitted that to accord with the Authority's parking calculator that 40 spaces should be provided, albeit a reduced number of spaces (31) was acknowledged to be suitable by the Authority at the Inquiry.
64. The appeal site is located in a sustainable location, close to a wide range of services and facilities in the town centre and bus stops. The train station is within walking distance for some and there is a car club space close to the appeal site. This is the type of location where a reduced number of car parking spaces can reasonably be provided to encourage its occupiers to use alternative modes of transport to the private car as supported by Policy AM1 of the LNP and Policy SD19 of the SDLP. The provision of new pavements as part of the schemes along with crossing points would provide connectivity with existing pedestrian facilities in the locality and encourage future occupiers to walk rather than drive the relatively short distances to services and facilities in the town centre. It is noteworthy that nearby to the appeal site, car free housing has been granted planning permission⁶. The cycle parking, travel plan and membership of the local car club proposed are all measures that would support this.
65. Moreover, future occupiers would be aware that they would have limited access to car parking on site, that car parking in the vicinity of the site is problematic and may well choose to rent or buy with this knowledge in mind. I consider that whilst the intended future occupiers of the units and their visitors may place a demand on the car parking spaces in nearby roads, that such a demand would not be excessive and would therefore not materially add to localised parking stress. Indeed, in Appeal B, 2 additional on-street car parking spaces

⁵ Dated 29 October 2021

⁶ 5 dwellings at Meridian Row and 4 dwellings at Canon O'Donnell Centre

would be provided close to the appeal site. In this regard the parking demands from the proposed developments would be unlikely to cause inconvenience to nearby occupiers to the degree that would be harmful to their living conditions.

66. The car parking area serving the schemes would have no dedicated turning areas within it. Whilst this absence may result in a number of vehicle movements to exit/enter a car parking space particularly if all the spaces are occupied by vehicles, it is clear from the submitted evidence that vehicles could safely access and exit the proposed spaces. In the event that there were extra vehicles in the parking area which could not park in a space, there may be instances where vehicles entering or exiting would need to reverse into the road, however no substantive evidence has been provided that such a situation would be likely to occur, other than infrequently.
67. Although part of the new access' visibility splay to the east on Spital Road would fall across the proposed landscaping to the front of dwellings facing the road, the height of the planting could be controlled by planning condition, thereby ensuring that the necessary visibility could be obtained. To the west on Spital Road and based on the actual measured speeds provided, I am satisfied that sufficient visibility for drivers using the access point would be achieved and that drivers using the road would have sufficient advance warning of vehicles using the access.
68. The relocated on-street car parking spaces and new spaces in Spital Road that would be provided in Appeal A and Appeal B respectively would be located in close proximity to car parking spaces on the southern side of Spital Road. I acknowledge that if the end space within each parking area on both sides of the road were occupied that a pinch point in Spital Road would be created. As such drivers of vehicles, and particular wide vehicles would need to drive carefully and slowly past the parked vehicles. Such behaviour would not in itself present a highway hazard; the road would remain wide enough for a vehicle to pass the parked vehicles and would, if anything, help to keep speeds below the speed limit on this section of the road.
69. Accordingly, given the above I conclude that the proposal would not be harmful to highway or pedestrian safety. A safe and suitable access to the site could be achieved in both appeals and the residual cumulative impacts on the road network would not be severe. In this way there would be no conflict with SDLP Policies SD19, SD20, SD21 or SD22, or LNP Policies AM1, AM3 or PL1 B which collectively seek to promote the use of sustainable transport modes, contribute to a network of non-motorised travel routes, provide an appropriate level of private cycle and vehicle parking and ensure the safe and efficient operation of the strategic and local networks. Moreover, the proposals would not be harmful to the living conditions of nearby occupiers and there would be no conflict with SDLP Policy or LNP Policy PL1 B which seek development to have regard to avoiding harmful impact upon any surrounding uses and amenities.

Sustainable Construction

70. SDLP Policy SD48 relates to climate change and sustainable use of resources. I recognise that these matters are inherent to the landscape-led approach to development in the National Park.
71. The appellant has submitted Energy and Sustainability Statements which reached the same conclusions for both appeal schemes. The Statements

outlined a number of sustainable design and construction measures, including high performance building fabric, heat recovery ventilation, efficient space heating and domestic hot water generation as well as the use of renewable technologies. The measures proposed demonstrate how the proposed schemes would achieve a 19% reduction in regulated carbon dioxide emissions against the baseline set by Part L of the Building Regulations 2013.

72. The factors taken into consideration by the appellant in the Statements are to me entirely reasonable and accord with the former Code for Sustainable Homes Ene 1 referred to in the footnote to Policy SD48, which sets out that the aim of the Ene 1 credit category is: 'To limit CO2 emissions arising from the operation of a dwelling and its services in line with the current policy on the future direction of regulations'. My reading of this is that the use of renewable energy technology is not excluded as suggested by the Authority. Had the Authority wanted to exclude reference to renewable technologies, it should perhaps have referred to Ene 2 and Ene7 which separate fabric energy efficiency from low and zero carbon energy.
73. I acknowledge that Part 3 of Policy SD48 of the SDLP is an additional factor which needs to be demonstrated in addition to the 19% carbon dioxide reduction improvement set out under Part 2 of the Policy. However, this part of the policy requires demonstration of how the development addresses climate change. I find that the submitted information including the use of photovoltaic panels, electric vehicle chargers, the control of water usage, waste management, including construction waste, sustainable drainage, biodiversity enhancements, use of low carbon materials and sustainable construction achieves this.
74. The Authority's adopted Sustainable Construction Supplementary Planning Document⁷ (SPD) provides guidance and the Authority's expectations for different forms of development when applying development policies. Some of these expectations, including that 20% on-site Green Energy CO2 reductions are provided, and that 10% of the homes are passive house certified whilst to be applauded, go above and beyond what Policy SD48 seeks to achieve in my opinion. The fact that the Authority say no objections were received to the SPD does not alter my findings in this regard.
75. For the reasons given above I conclude that the appeal proposals would be sustainably constructed, in accordance with SDLP Policy SD48, and LNP Policies PL1 B, PL2 and PL4 which collectively require development to be planned and designed anticipating the effects of climate change, including increasing energy and water efficiency and incorporating low carbon on site power generation. Whilst there would be conflict with some of the specific measures sought by the SPD, I find that there would be no conflict with its purposes of seeking development to adapt well to and mitigate against the impacts of climate change and other pressures.

Drainage

76. The appellant proposes a below-ground attenuation tank in both schemes to control surface water run off from the development as well as water butts. Green roofs are also proposed on the terraces. Foul drainage would be gravity fed to the public sewer. The appellant has calculated that off site surface water

⁷ Adopted August 2020

run off would be restricted to 2.0 l/s resulting in an improvement over existing runoff rates of approximately 50%.

77. During the course of the appeals Southern Water provided confirmation⁸ that the submitted drainage strategy was a betterment of proposed combined flows to the existing public sewerage system and accordingly have recommended that a planning condition is attached to the grant of any planning permission.
78. The Authority remain concerned about aspects of the drainage proposed including the effectiveness of the green roofs, rain gardens and water butt provision. Whilst noting these concerns, I am satisfied that the appellant has provided sufficient information to demonstrate that a sustainable drainage system could be incorporated into the design of the developments, the details of which, including the management, could be controlled by planning condition.
79. Accordingly, I conclude that the appeal proposals would be suitably drained utilising sustainable drainage systems, in accordance with SDLP Policies SD17, SD50 and LNP Policy PL1 B which require, amongst other matters that groundwater is protected, that there is no net increase in surface water run-off and that SuDs supports public amenity areas and enhances biodiversity.

Contributions

80. Two Section 106 Agreements (one for Appeal A and one for Appeal B) dated 16 August 2022 were submitted after the Inquiry closed. They include a number of obligations which would come into effect if planning permission were to be granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and as set out in paragraph 57 of the Framework. These state that a planning obligation must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
81. A financial contribution would be payable to cover a Traffic Regulation in respect of relocating the on-street parking bays in De Montfort Road to Spital Road in the Appeal A scheme, and to cover the provision of 2 further on-street car parking spaces in respect of Appeal B. Such provision is necessary and reasonable in the interests of highway safety. The contribution offered in respect of the Travel Plan is necessary to promote sustainable modes of transport, including encouraging the use of the local car club. This is necessary given the parking proposed in respect of both schemes. These obligations are supported by SDLP Policies SD19, SD20, SD21 and SD22 and LNP Policies AM1, AM3 and PL1 B.
82. I am satisfied that the above obligations comply with the Framework and CIL Regulations, and I have taken them into account in coming to my decision.

Benefits

83. The schemes would deliver 28 residential units on an allocated site which comprises previously developed land in a sustainable location close to the services and facilities in Lewes town centre. The development of this site would be likely to reduce pressure on greenfield sites within the locality which would

⁸ Letter dated 16 June 2022

support the purposes of the National Park. I attach significant weight to these benefits.

84. The pedestrian experience within the vicinity of the site through the provision of a pavement and crossing points and the creation of a twitten in Appeal B would be improved. Limited weight is given to these matters because the development plan expects improvements to the pedestrian environment and such aspects largely mitigate the impact of the appeal proposal. The relocation of the parking spaces in Appeal A serve to mitigate the impact of the proposal, however the additional spaces in Appeal B is a benefit which weighs in favour of the proposal in this case.
85. In both appeals there would be economic benefits both during construction of the development and once the units were occupied. There would also be social benefits as a result of the occupation of the developments. These benefits would support the Second Purpose and Duty of the National Park. However, these aspects would be a benefit of any housing development and would not be an unusual benefit of these schemes such that the weight to be afforded to them should be anything other than modest.
86. In the event that the schemes were viable in the future, the provision of affordable housing would be a benefit. However, at this stage, and although being policy compliant, the absence of affordable housing means that no favourable weight can be given to this matter in my overall assessment of these appeals.
87. The contributions payable through the S106 Agreements, the public realm works contained within them, provision of membership of the local car club and the travel plan are benefits of the schemes, but as such factors largely mitigate the impact of the appeal proposals, they attract little weight.

Planning and Heritage Balance

88. There is no doubt that the benefits of these proposals are considerable, including housing provision, use of a brownfield site, enhanced pedestrian facilities, public realm works and encouragement of sustainable transport modes which broadly accord with many policies of the development plan. However, in my view the design of the development proposed in each appeal should be of utmost importance. The harm that would be caused by both schemes to the character and appearance of the area, to heritage assets and to living conditions, as well as the mix of housing not reflecting local need in Appeal A brings the schemes into fundamental conflict with the development plan as a whole and the statutory purposes and duty of the National Park.
89. Taking all of these matters into account, the public benefits of the proposal would not, either individually or cumulatively, be sufficient to outweigh the harm that would be caused to the CA as a designated heritage asset through harmful development within its setting. This brings the schemes into conflict with the conserving and enhancing of the historic environment aims of the Framework.
90. In the overall planning balance, although considerable, the benefits of the proposals are not sufficient in these cases to outweigh the harm I have identified and the conflict with the development plan as a whole.

Conclusion.

91. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude, that the appeals should be dismissed.

RC Kirby

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE NATIONAL PARK AUTHORITY

Dan Kolinsky KC instructed by Becky Moutrey, Solicitor to the South Downs National Park Authority

He called:

Jody Slater BA(Hons) Dip MSc MRTPI	Design Officer, at round table session on design and sustainable construction
Jody Blake BA MSc IHBC	Conservation Officer, at round table session on heritage
Mike Hughes BA(Hons) MSc MRTPI	Major Planning Projects and Performance Manager on planning, conditions and planning obligations
Teresa Ford MIHE	Senior Transport Development Control Officer, East Sussex County Council on highway matters
Fraser Castle MSc MRICS	Registered Valuer and Development Partner at Bruton Knowles LLP on viability

FOR THE APPELLANT

Matthew Reed KC instructed by Paula Carney, Carney Sweeney Planning

He called:

Paula Carney	Carney Sweeney Planning
Lewis Eldridge	The Townscape Consultancy
Donal O'Donovan	Fairhurst
Matthew Bailey	Hodkinson Consultancy
Jody O'Reilly	HCUK Group
Lloyd Bush	Velocity Transport Planning
Richard Ashdown	Upside London Limited

INTERESTED PERSONS

Councillor Imogen Makepeace	Town Councillor Priory Ward
Councillor Dr Wendy Maples	Local Councillor
Councillor Adrian Ross	Local Councillor
Dr Chibnall	Local Resident
Mrs Liz Thomas	Local Resident
Stephen Smith	Local Resident
Matt Carr	Local Resident
Anna Stevens	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1	Opening Statement for the Appellant
ID2	Opening Statement for the National Park Authority
ID3	Draft S106 Agreement
ID4	Viability Matters Note for The Inspector
ID5	E-mail correspondence dated 20 July 2022 between Mr Bush and Ms Ford
ID6	Mr Castle's Note to the Inspector dated 21 July 2022
ID7	Mr Castle's Errata Sheet for his Proof of Evidence
ID8	Hodkinson note regarding Part L (2013) and Code for Sustainable homes – Energy Efficiency
ID9	Note regarding Ene 1 Code for Sustainable Homes
ID10	Mr Ashdown note Gross Land Value Table
ID11	Mr Castle BCIS £/m2 study
ID12	Mr Castle's comments on Gross Land Value Table including Lewes Bus Station
ID13	Suggested List of Conditions for Both Appeals
ID14	SDNPA's Closing Submissions
ID15	Closing Submissions on behalf of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

ID16	Section 106 Agreement Appeal A dated 16 August 2022
ID17	Section 106 Agreement Appeal B dated 16 August 2022