



Appeal Decision

Hearing held on 4 April 2023

Site visit made on 4 April 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2023

Appeal Ref: APP/D1265/W/22/3311560

Land off Verne Common Road, Portland and to the east of rear gardens of Ventnor Road, Dorset, DT5 1EJ

- 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 Neil Laming of Laming and Sons Ltd against the decision of Dorset Council.
 - The application Ref WP/18/00662/FUL, dated 17 August 2018, was refused by notice dated 7 July 2022.
 - The development proposed is described as 'Develop existing vacant land by the demolition of existing dilapidated garage, formation of new vehicular access, erection of 25 dwellings, construction of a play area and associated landscaping improvements'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal submissions include two counterpart planning obligations prepared pursuant to s106 of the Town and Country Planning Act. These obligations make provision for five affordable homes, an affordable housing contribution of £59,254 and a sum of £15,638 towards mitigating the effect of the scheme on biodiversity, as agreed through a biodiversity mitigation plan. As a result, the Council has not sought to pursue its objections articulated in its third and fourth reasons for refusal. Thus, the main issues in this appeal are:
 - Whether the appeal site is an appropriate location for the proposed development, with reference to the spatial strategy in the development plan;
 - The effect of the proposed development on incidental open space; and
 - The effect of the proposed development on the setting of Verne Citadel, a Scheduled Ancient Monument.

Reasons

Spatial strategy

3. Policy SUS1 of the West Dorset, Weymouth and Portland Local Plan 2015 (LP) states that provision will be made for a deliverable supply of housing land to accommodate in the region of 15,500 homes. To achieve this minimum quantum of development in a sustainable way that balances local needs,

economic growth and safeguarding the environment, Policy SUS2 of the LP sets out a spatial strategy. This principally encompasses an approach that seeks to distribute development to land within defined development boundaries in accordance with a settlement hierarchy.

4. Policy SUS2 explains that Portland sits in the second of three tiers and is a settlement that will be a focus for development. A settlement boundary has been placed around Portland so the requirements of Policy SUS2 ii) and iii) are relevant. These state that development within a settlement boundary will normally be permitted, but on sites outside the defined boundary, development is restricted to a closed list of different types.
5. Policy Port/EN6 of the Neighbourhood Plan for Portland 2017-2031 (NP) defines the development boundary for Portland. It also reiterates that development proposals within the boundary will be supported subject to compliance with other policies in the NP.
6. The aims of Policy Port/EN6 are set out in the supporting text and include protecting the unique and sensitive open landscape of the island, preventing coalescence, supporting the sustainability of the area and recycling previously developed land in settlements. Thus, when considering these aims there is a corollary that development outside a settlement boundary is not supported by Policy Port/EN6. This would, however, be overly restrictive and therefore Policy Port/EN6 needs to be considered in the context of Policy SUS2 and the list of development types permitted in principle outside settlement boundaries.
7. The settlement boundary for Portland was established following what appears to be a robust and objective process which followed set criteria as a means of reviewing the previous development boundary. The appeal site is not included within the defined development boundary. There is currently no indication that this situation will change in emerging policy documents. Indeed, the Town Council has engaged consultants AECOM to undertake an assessment of potential development sites. The appeal site was found to be inappropriate for allocation for reasons that included the considerable distance from some key services and the visual impact.
8. Accordingly, the appeal scheme would be for the erection of twenty open market homes and five affordable properties outside the settlement boundary of Portland. Affordable housing is listed in Policy SUS2 iii) as a permitted development type. However, this needs to be considered through the prism of Policy HOUS2 of the LP, which only exceptionally permits affordable housing on sites adjoining settlements when it would meet an identified local need. Thus, the proposal as a whole would be development outside the defined settlement boundary and would not be any of the types permitted in principle. It would therefore be at odds with the spatial strategy.
9. In conclusion, the appeal site would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan, which is a carefully drafted and considered statement of policy. Instead, the proposal would undermine the objectives of the strategy. This would be harmful given the public interest in having a genuinely plan led system that provides consistency and direction.

The effect on incidental open space

10. Policy Port/CR4 of the NP states that areas of incidental open space within residential areas that contribute to local amenity, character and/or green infrastructure should be protected from development. That is except where the loss of public amenity and community wellbeing can be compensated or any damage to green infrastructure and/or local character can be rectified, or the existing situation enhanced. These appear to be separate tests depending on what the value of the incidental open space is.
11. The policy does not define what an incidental open space is and there is no map identifying them. That said, the supporting text to the policy provides some further guidance. It explains that many of the housing areas of Portland were developed with areas of incidental open space included in the layout to provide amenity and/or a shared recreation space for residents. Verne Common is listed as a mature open space in this regard.
12. The appeal site can be split into two distinct areas arranged either side of a public footpath. A small area to the north of the footpath is closely flanked by existing housing and therefore has the appearance of being located within a residential area.
13. The much larger part of the appeal site to the south of the footpath encompasses rough grassland and scrub and has a rural appearance. It is visually contiguous with the grassland areas to the south and east of the appeal site that generally envelop the hill side. Thus, it is next to a residential area but is not within one. Therefore, it seems to me that the incidental open space referred to as Verne Common in the NP is the small parcel of land to the north of the footpath. The implication being that the remainder of the site does not fall within the scope of Policy Port/CR4 and consequently its development for housing does not fall to be considered against this policy.
14. Substantive evidence is not before me to confirm either way whether there is any obligation on the current landowner to allow public access to the parcel of land north of the public footpath. That said, it is not fenced and anecdotal evidence from interested parties suggests that, until recently, the area had play equipment on it and was managed and used as an amenity space. Indeed, some representations suggest it was a public open space that dates to the 1950s when the housing estate was approved and constructed. It is therefore conceivable that this parcel of land contributes to community wellbeing as a public amenity.
15. Moreover, the incidental open space is of some value to local character in providing a green space between properties and alongside a public footpath. However, the space is not well landscaped, is apparently of modest biodiversity interest and nearby houses back onto it. Therefore, it makes a moderate contribution to local character and green infrastructure.
16. The appeal scheme would involve the erection of several homes on the incidental open space and therefore its contribution to local character and green infrastructure would be harmed. A diminutive community space would be provided within the development, but it would not be of a sufficient size to amount to reasonable compensation. The value of the site to green infrastructure and/or local character is not high. But developing this parcel of land would nevertheless result in some damage in this regard, which would not

be rectified by the scheme as a whole. Nor would the proposal overall result in local character or green infrastructure being enhanced. The retained swathe of land to the west and south of the site would provide a green corridor, but the existing site in its undeveloped state does so to a greater extent. Accordingly, the proposal would be at odds with Policy Port/CR4 of the LP.

The effect on the setting of Verne Citadel, a Scheduled Ancient Monument

17. The Verne Citadel was built as part of a series of defences to guard the Portland and Weymouth coastline. It occupied the top of Verne Hill, which was once an open common, and was constructed and modified between about 1847 and 1881. The completed citadel comprised large earthen ramparts encircling the hilltop with extensive ditches along the southern and western slopes and gun batteries on three sides. The citadel was re-armed in the 1890s but became increasingly obsolete in the early 1900s due to advancements in artillery and high explosive shells. It was nevertheless retained by the military through the world wars, but then became a prison in around 1948.
18. The Citadel therefore tells us much about defensive military construction from the 1800s and stands as a testament to the invasion concerns that were prevalent in the mid to late nineteenth century. Its scale and scope are evidence of how seriously this threat was taken and the strategic importance of the area. Much can also be gleaned from the structure about the conditions of the military personnel stationed there. Accordingly, the Citadel has considerable evidential, communal and historic value and significance.
19. The Citadel is a highly prominent and imposing structure set atop the hill and away from the edge of Portland. The ability to appreciate its siting is crucial to understanding its heritage value and significance. There is an undeveloped hill side buffer between it and the development to the west. Part of this is the glacis where attackers would be exposed to the defender's fire and is an important western defence of the complex. Portland would likely have been at a distance to ensure structures could not be used for cover. Accordingly, the buffer between the fort and Portland enables the commanding position of the fortifications, and the steeply sided defensive slopes, to be fully appreciated and understood. This relationship can be appreciated from several vantage points such as Chesil Beach, New Road, and New Ground. The sense of detachment from the settlement of Portland is therefore important to the setting and experience of the monument and thus its significance.
20. The 1950s housing estate built along Verne Common Road has encroached up the hill side and thus harmfully eroded the setting of the Citadel. The appeal scheme would compound this impact as it would be a noticeable body of houses that would extend the limits of the built-up area further south. This impact would be highly visible from Chesil Beach and from the south. The prominence of the proposal would be heightened by its comparably compact nature and the alignment of most roof ridges east-west rather than north-south, as is otherwise generally found at other buildings nearby.
21. The development of the northern parts of the appeal site, especially the incidental open space discussed above, would be viewed as infilling. However, the sense of the proposal harmfully eroding the green buffer around the Citadel would be more pronounced towards the south of the site, as this part is more open and rural in appearance. The impact would also be moderated by the presence of some houses along Verne Common Road being at a higher position

on the hill side. However, these properties appear as a thin grouping that tapers off, whereas the appeal scheme would appear as a relatively intense block of development. Moreover, the development would project further south and thus wrap around the hill to a greater extent. The scheme would incorporate additional landscaping, but the visualisations provided by the appellant demonstrates that this would do little to obscure the visual effect. As a result, there would be residual harm.

22. The author of the appellant's Heritage Assessment states that it is clear the proposed development will impact the setting of the scheduled monument. They however make the point that Historic England did not object to a previous scheme in 2016. The reasons for this have not been articulated in the evidence before me, but the 2016 approval¹ was for a much smaller scheme of only eight homes. In any event, Historic England have provided comments confirming that in their view, the current proposal would result in less than substantial harm to the setting of the scheduled monument.
23. Historic England suggest that the harm would fall far short of being 'substantial' within the meaning of the National Planning Policy Framework (the 'Framework'). However, as substantial harm is a high bar to reach, it does not automatically follow that Historic England are suggesting the harm would be negligible, as suggested by the appellant. The impact would not be of a high order because the Citadel is a very large monument with an extensive setting. In this respect, the proposal would not be visible in many views of the Citadel. However, I share the view of the Council that there would nevertheless be a moderate level of harm due to the importance of the western slope to the significance of the monument and the prominence of the proposal in this part of its setting.
24. In conclusion, the proposal would moderately harm the setting and significance of Verne Citadel. For reasons I will go into, the harm is not outweighed by public benefits. The proposal would therefore be at odds with Policy ENV4 of the LP and Policy Port/EN4 of the NP, which both seek to secure development that conserves the significance of a designated heritage asset unless the harm can be justified.

Other Considerations

Housing land supply

25. Paragraph 74 of the Framework states that local planning authorities should identify and update *annually* a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against, in this instance, their local housing need.
26. In an attempt to demonstrate a five-year housing land supply, the Council is relying on a report published in May 2022 relating to a five-year period with a base date of the 1 April 2021. The evidence is therefore dated and not based on an annual update as required by Paragraph 74, which in this case would be a report with a base date of the 1 April 2022. That said, even a report with a base date of the 1 April 2022 would now be increasingly out of date as the Council should currently be working on producing and publishing an annual update with a base date of the 1 April 2023.

¹ WP/16/00286/FUL

27. I was advised at the hearing that the Council has not published a report with a base date of the 1 April 2022 because it is waiting on the results of the Housing Delivery Test. However, these results are not required to establish the five-year housing land supply position.
28. The age of the Council's evidence presents several problems. Firstly, the five-year period the Council is advancing would only run to 31 March 2026, which is only three years from a current assessment and one year short of what it would be if an annual update had been provided with a base date of the 1 April 2022. Moreover, the assessment inputs would have evolved between April 2021 and April 2022. For example, permissions may have lapsed, and other developments may have been completed. The Council may have also permitted new schemes. The appellant also makes the very pertinent point that the local housing need figure would have changed. In this regard, the indications are that the housing requirement would have increased for the period from the 1 April 2022.
29. The Council's evidence does not entirely date from 2021, as it has referred to some updates from developers and site promoters from January 2023. However, when discussing the sites at the hearing, it was apparent that the findings on the deliverability of several sites was still based on what the Council had been told in 2021. This is not using evidence that is sufficiently up to date.
30. Therefore, in the absence of an annual update for the period from 1 April 2022, I am not satisfied the Council is currently able to identify, and thus demonstrate, a five-year housing land supply. The extent of the shortfall is material to my assessment but in the absence of up-to-date evidence, critical data is missing, and therefore any finding on the extent of the shortfall would be very speculative. That said, the appellant has suggested that the shortfall is likely to be acute, and I have relied on this on a precautionary basis in the absence of robust evidence from the Council to the contrary.

Heritage balance

31. As already stated, the moderate harm that would occur to the significance of Verne Citadel would be 'less than substantial' within the meaning of the Framework. Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal.
32. The appeal scheme would deliver a mix of twenty-five homes adjacent to the settlement boundary of Portland at a point in time when the Council are currently unable to demonstrate a five-year housing land supply, and at an apparently challenging time for the house building industry. The appellant suggest that the shortfall is acute. The proposal would therefore assist in remedying this pressing matter. This needs to be considered in the context of the need to significantly boost the supply of housing. Moreover, given the size of the proposal and the 'full' nature of the application, it is likely the proposal could be delivered quickly by a small to medium developer.
33. That said, the Council are currently working on the production of a new local plan which is currently scheduled to be adopted within the next five-year period. In addition, the Town Council has confirmed that it is working on identifying sites for development as part of the neighbourhood planning process. As a result, the shortfall is likely to be a matter that only endures for the medium term. Moreover, the Council performed very well in the last

Housing Delivery Test. Thus, the contribution to the housing land supply is a matter of significant rather than substantial weight.

34. The proposal would also deliver five affordable homes and a financial contribution towards off site provision, both of which would be secured through the planning obligation. There is no dispute between the parties that there is a high need for affordable housing. However, the provision of five affordable homes and limited off-site funds would be a modest contribution to the supply of this type of housing. Overall, I afford this point moderate weight.
35. Building twenty-five homes would provide a boost to the construction industry but this would be limited to a reasonably short period given the scale of the scheme. The subsequent occupation of the homes would provide a more enduring boost to local spending, but the scale would not be of a high order and residents may need to drive to local facilities due to the very steep location of the site. Overall, I afford moderate weight to the economic benefits of the scheme. The new residents of the scheme would provide some vitality to Portland by getting involved in local life, but this is going to be a limited benefit given the very modest scale of the scheme relative to that of the settlement. The Ecology Report also suggests that some modest enhancement measures could be delivered, including bat and bird boxes.
36. The Framework states that designated heritage assets are an irreplaceable resource that should be conserved for existing and future generations. Any harm to their significance is therefore an important matter. Indeed, the Framework states that great weight should be given to an asset's conservation and the more important the asset, the greater the weight should be. Conservation in this context means sustaining, and thus not harming, an assets significance. In this case, the designated heritage asset is a scheduled ancient monument and has a high degree of significance. The Planning Practice Guide² explains that scheduled monuments are designated because of their national importance. Consequently, more than great weight should be afforded to the conservation of Verne Citadel.
37. The proposal would result in moderate but permanent harm to the setting and significance of a nationally important monument. This matter carries weight of a high order. Against this, the public benefits of the proposal are cumulatively of significant weight. Overall, the benefits are not of sufficient force to outweigh the weight I afford to the less than substantial harm that would occur. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to the significance of a designated heritage asset would not have clear and convincing justification.
38. In coming to this view, I am aware that the Council, both Officers and Members of the planning committee, initially concluded that the public benefits of the proposal would outweigh the heritage harm. In fact, the scheme had a resolution to grant in light of this. However, I have carefully considered the relevant committee reports and can find no reference, direct or implicit, to the need to give the harm to the setting/significance of Verne Citadel at least great weight. This explains the different conclusion I have reached.

² Paragraph 023 Reference ID: 18a-023-20190723

Paragraph 11 of the Framework

39. Paragraph 11d of the Framework is engaged on account of the Council currently being unable to demonstrate a five-year housing land supply. This states that permission should be approved unless, in the first instance, the application of policies in the Framework that protect areas or assets of particular importance, such as designated heritage assets, provide clear reasons to refuse the proposed development. In this instance, because the public benefits of the proposal would not outweigh the less than substantial harm that would occur to a scheduled ancient monument, there is a clear reason to refuse the proposal. Accordingly, the tilted balance in Paragraph 11d)ii of the Framework is not engaged on this occasion.

Other Matters

40. Given my findings above, it is unnecessary to consider whether the proposal would have a likely significant effect on the integrity of European sites³ and, in particular, whether strategic access management and monitoring is infrastructure and thus capable of being secured through Community Infrastructure Levy funds. Similarly, I have not needed to reach a finding on the other concerns of interested parties, whether there are exceptional circumstances⁴ that suggest the out-of-date biodiversity surveys can be rectified through the imposition of a planning condition or whether the proposal would preserve the setting of the nearby Conservation Area.
41. As already mentioned, planning permission was previously granted for the erection of eight dwellings at the appeal site. This permission has since lapsed and is not capable of implementation. As a result, it is not a fall-back position. In any event, the provision of eight homes is likely to have a lesser impact than the twenty-five now proposed. Therefore, the two schemes are not comparable and consequently the previous permission is a matter of very limited weight in my assessment.

Conclusion

42. The proposed development would harm the setting of a designated heritage asset and this impact is not outweighed by public benefits. It therefore follows in this instance that the benefits of the proposal would not outweigh the totality of harm I have identified either. Thus, the proposal would be contrary to the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Graham Chamberlain
INSPECTOR

³ The Isle of Portland to Studland Cliffs Special Area of Conservation or the Chesil and the Fleet Special Area of Conservation, Special Protection Area and Ramsar

⁴ See Circular 06/2005

APPEARANCES

FOR THE APPELLANT

Andy England
Sophia Dykes

CL Planning
CL Planning

FOR THE LOCAL PLANNING AUTHORITY

Ann Collins
Emma Telford
Claire Lynch
Christopher Lee
Sarah Hardy
Andrew Galpin

Dorset Council
Dorset Council
Dorset Council
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DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- Dated copies of the planning obligations