



Appeal Decision

Site visit made on 16 January 2023

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/D1265/W/22/3299906

Land off Herrison Road, Charlton Down, Dorset DT2 9XX

- 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 outline planning permission.
 - The appeal is made by Land Allocation Ltd against Dorset Council.
 - The application Ref WD/D/20/002501, is dated 7 October 2020.
 - The development proposed is outline application including access, with all other matters reserved, for up to 50 (maximum) residential dwellings.
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Decision

1. The appeal is dismissed and planning permission for outline application including access, with all other matters reserved, for up to 50 (maximum) residential dwellings is refused.

Preliminary Matters

2. The application was submitted in outline. The application form indicates that approval is only sought for access. Appearance, landscaping, layout and scale are reserved for subsequent determination. I have had regard to the drawings showing the illustrative layout of the scheme insofar as they indicate how the site could be developed and show the number of residential units that could be accommodated on the site.
3. The appeal was made against a failure to give notice of a decision on the planning application within the prescribed period. However, the Council have detailed their concerns within their submissions, and advised that, had they been in a position to determine the application, it would have been refused.
4. The appellant has submitted Planning Obligations in the form of counterpart Unilateral Undertakings (UU), signed and dated 16 January 2023, pursuant to Section 106 of the Town and Country Planning Act 1990, which I shall return to later in this decision.

Main Issues

5. Having regard to the Council's putative reasons for refusal, the main issues are:
 - Whether the appeal site represents a suitable location for the proposal, having regard to national and local planning policies, which seek to restrict residential development in the countryside;

- The effect of the proposal on the special interest of the Charlton Down Conservation Area, nearby listed buildings and non-designated heritage assets (including nos 1-2, 5 and 6-11 Herrison Road, the earth works of Herrison Deserted Medieval Village and the earth works of the Deserted Settlement near Herrison House); and
- The effect of the proposal on the character and appearance of the area, including the setting of the Dorset Area of Outstanding Natural Beauty (AONB).

Reasons

Location

6. Policy SUS2 of the West Dorset, Weymouth and Portland Local Plan¹ (WDWP LP) outlines the settlement hierarchy for the area administered by the Council. It seeks to encourage a greater proportion of development towards the larger and more sustainable settlements, whilst in rural areas, proposals are generally directed to the settlements with defined development boundaries.
7. The appeal site lies adjacent to but outside the defined development boundary for Charlton Down where, as detailed in Policy SUS2, development will be strictly controlled, having particular regard to the need for the protection of the countryside and environmental constraints. In these locations, Policy SUS2 identifies a restrictive number of development proposals which are considered acceptable. The appeal scheme does not however meet any of these exceptions and thus conflicts with Policy SUS2.
8. The appeal scheme would not be physically isolated in the sense that the houses would be located within proximity to other properties on the edge of the village. There are some facilities available in Charlton Down, including a village shop with post office, a village hall and a gym/fitness centre. That said, many of the key services and facilities required for day-to-day living are not available within the village. It is therefore more likely that future occupiers of the development would have to travel further afield to access the wider range of facilities but also education and employment opportunities available in larger settlements.
9. The appellant's submissions indicate that the proposed development would be well served by bus services running between Dorchester, Sherborne and Yeovil, via Cerne Abbas and Charminster. However, the nearest bus stop is located approximately 900 metres from the appeal site, and there are only 6 services daily, which are restricted to the working week. The bus services available remain infrequent and would therefore require future occupiers to plan their journeys in advance, thus lacking the degree of flexibility needed to deter people from using private motor vehicles.
10. I have had regard to the walking route connecting the site to the centre of the village, as described in the appellant's submissions, using the public right of way along Back Lane and an unadopted footpath leading to Poplar Drive. However, as stated in Manual for Streets, land use patterns that are most conducive to walking are where there are a range of facilities within a 10-minute walk (up to about 800 metres).

¹ Adopted October 2015.

11. The distance involved to reach the centre of the village however exceeds the recommended distance. Furthermore, the condition of the unadopted footpath is likely to discourage many pedestrians, for example the elderly or people with pushchairs. People are also likely to feel vulnerable in the absence of street lighting for part of the route, which would discourage walkers in the evenings, especially at times of the year when daylight hours are restricted.
12. The Local Highway Authority has recommended the imposition of a condition requiring the continuation of the public footway from Back Lane. However, in the absence of further information regarding the extent of the proposed works, I cannot be certain that such a condition would meet the relevant tests set out in paragraph 56 of the National Planning Policy Framework (the Framework).
13. There are no formal cycling routes or facilities in the vicinity of the site, and cyclists would in all likelihood have to use Herrison Road to travel further afield. This single carriageway is approximately 5 metres wide, is subject to a speed limit of 60mph, and does not benefit from street lighting. Within proximity to the site, there are also no footways on Herrison Road.
14. In the absence of substantive evidence to the contrary, I find that this does not represent an environment in which most cyclists would feel particularly safe. In such an environment, cycling is unlikely to represent an attractive alternative to motor vehicles. Whilst the appellant suggests that a TRO could be secured to reduce the speed limit along Herisson Road, limited details have been provided, particularly in respect of the mechanism to implement it. For these reasons, and even allowing for the possibility of some journeys being carried out walking, cycling or by bus, there is a greater likelihood that, due to the site's location in relation to the village and the wider network, future residents would rely on private motor vehicles for the vast majority of trips.
15. Given the above, I conclude that the proposal would not be suitably located, having regard to national and local planning policies, which seek to restrict residential development in the countryside. The appeal scheme would therefore fail to accord with the requirements of the development plan and the Framework.

Heritage

The Heritage Assets and their Significance

16. The appeal site comprises a large agricultural field located on the western edge of Charlton Down. A small section of the appeal site lies within the Charlton Down Conservation Area, whilst the remaining part extends within its setting. The special interest of this designated heritage asset resides primarily in the historic development of the area as an institution for people with psychiatric disorders set within a tranquil setting and landscaped grounds, which progressively established itself as a self-supporting community. The prominence of the village within the wider landscape, particularly from the higher ground of the surrounding hills, is also recognised as a key consideration of the Conservation Area's special interest.
17. Within the Conservation Area, the Grade II listed buildings known as Herrison House (1261346) and the former Chapel Block (1119850) form the core of the historic asylum site dating from the 19th and early 20th centuries. Their special interest is primarily derived from their architectural and historic significance as

key components which have contributed to the development of Charlton Down. Within proximity to the site, there is also a Grade II listed building known as Cowden Farmhouse (1153973), which dates from the 17th century. In addition to its evident architectural interest, this is a building which is of considerable significance, notably due to its spatial and historic relationship to other medieval settlements of the Cerne River Valley.

18. The appeal site also lies within the setting of a number of historic properties, which the Conservation Area Appraisal² (CAA) identifies as important local buildings making a positive contribution to the special interest of the Conservation Area, and shall therefore be treated as non-designated heritage assets. These include nos 1-2 Herrison Road and nos 6-11 Herrison Road, sited prominently on the opposite side, which were built as semi-detached staff cottages in the late C19 – early C20. In addition to their historic significance, they represent a focal point along the southern gateway into the Charlton Down Conservation Area.
19. No 5 Herrison Road, with its thatched roof, stone and flint walling with brick dressings, retains much of its architectural interest as a picturesque cottage reflecting the rural character of the area, and historic interest due to its connection with Herrison Farm.
20. Moreover, the site covers in part the earthwork remains of the possible Deserted Settlement near Herrison House (Dorset HER MDO758) and Herrison Deserted Medieval Village (Dorset HER MDO759), over which a significant part of the proposed development would be built. The significance of these non-designated heritage assets lies primarily in their archaeological interest, but also in the spatial and historic relationship which these sites may have had with other medieval settlements along the valley of the River Cerne.
21. The CAA identifies the surrounding countryside and associated views from and into Charlton Down as important elements of the significance of this designated heritage asset. There is no doubt that by virtue of its nature as an undeveloped, arable field, the site makes a very important contribution to the special interest of the Charlton Down Conservation Area. Not only does the site play an identifiable role in framing the rural setting of the village, but it also preserves some form of containment of the former hospital complex, thus emphasising its deliberate isolation within the countryside.
22. Furthermore, the site is immediately adjacent to nos 1-2 Herrison Road and no 5 Herrison Road and provides a pleasant setting to these non-designated heritage assets. The site helps maintaining a degree of separation between the main body of the former hospital and these properties, but also nos 6-11 Herrison Road which, as noted in the CAA, would have been placed outside the main complex on purpose. The site, which covers a large part of the deserted medieval settlements, also contributes significantly to the historic understanding of the area.

The effect on Heritage Assets

23. As shown on the indicative site layout, open space would be provided within the western section of the site, whilst the proposed dwellings and associated infrastructure would occupy the eastern part. The appeal scheme would appear

² Charlton Down or Charminster Herrison Conservation Area Appraisal (adopted December 2012).

as a significant intensification of development, which would substantially erode the spaciousness and openness of the appeal site, and thus its contribution to the setting of the Charlton Down Conservation Area.

24. I appreciate that the indicative layout seeks to mitigate the visual presence of the new dwellings, by dedicating a large proportion of the site to the provision of open space, and through additional soft landscaping. However, this means that the new houses would end up being squeezed within the remaining area of the site, creating a form of suburban residential estate, which would fail to reflect the pattern of development of its rural and sensitive surroundings. The proposed open space and additional planting would do little to soften the strong visual impact of the development, which would unduly stand out within the southern gateway into the Conservation Area.
25. The proposal would also harmfully intrude within the rural setting of nos 1-2 and no 5 Herrison Road, which would be perceived against the backdrop of a modern residential development. Furthermore, the development would erode the sense of seclusion which currently characterises the setting of these properties, as well as nos 6-11 Herrison Road. This would as a result compromise the ability to understand the special interest of these non-designated heritage assets, and in particular their role and relationship with the former hospital complex, and in the case of no 5, with Herrison Farm.
26. Whilst the presented evidence indicates that geographical survey and trial evaluation have been previously carried out, the construction of the proposed development on a major part of the Herrison Deserted Medieval Village would render the site inaccessible for further archaeological investigation. It would also diminish the ability to appreciate the significance of this area, for example for those travelling along the Cerne Valley Trail, and its evidential value as a former medieval settlement would to a large extent be lost.
27. Assuming that, as shown on the indicative layout, no dwellings are constructed on the area designated as the deserted settlement near Herrison House, there would nevertheless be some adverse effect upon the significance of this non-designated heritage asset. This is because the changes associated with the creation of public open space would undermine the ability to comprehend the relationship of this former village with other settlements along the Cerne Valley.
28. As the development would be constructed on the majority of the Herrison Deserted Medieval Village, there would be substantial harm caused to the special interest of this non-designated heritage asset. Moreover, the proposal would cause less than substantial harm to the special interest of the Charlton Down Conservation Area, nos 1-2, 5 and 6-11 Herrison Road and the Deserted Settlement near Herrison House. Paragraph 202 of the Framework requires that where less than substantial harm to the significance of a designated heritage asset is identified, this harm should be weighed against the public benefits of the proposal, to which I shall return when I deal with the heritage and planning balance.
29. No concerns have been raised by the Council regarding the effect of the development on the setting of Herrison House, the former Chapel Block and Cowden Farmhouse, and there are no reasons for me to reach an alternative view. I therefore confirm that the proposal would preserve the significance of these Grade II listed buildings.

30. The appeal scheme would however fail to preserve the character and appearance of the Charlton Down Conservation Area, to which I ascribe considerable importance and weight. It would also fail to preserve the special interest of nos 1-2, 5, 6-11 Herrison Road, Herrison Deserted Medieval Village (MDO759) and the Deserted Settlement near Herrison House (MDO758).
31. Accordingly, the proposal would conflict with Policy ENV4 of the WDWP LP, which seeks to ensure the impact of development on a designated or non-designated heritage asset and its setting is thoroughly assessed against the significance of the asset. Furthermore, it requires development to conserve and where appropriate enhance its significance. For the same reasons, the appeal scheme would also be in conflict with Section 16 of the Framework.

Character and appearance

32. The appeal site comprises agricultural land situated on the edge of the village of Charlton Down, within a rural area which is predominantly characterised by arable and pastoral fields, undulating gently towards the River Cerne. In terms of its wider landscape setting, the appeal site thus maintains a strong association with its rural surroundings.
33. Whilst there are native hedgerows along its boundaries, the site has a largely open character and spacious feel, which contrasts with the level of enclosure provided by the mature trees lining Back Lane on the edge of the village, and the mature woodland surrounding the former hospital complex. These characteristics are also recognised in the CAA, which identifies the line of mature trees and hedgerows as a 'significant physical feature that provides natural contour to the settlement and defines it from open countryside, as well as screening the buildings from the Cerne valley floor'.
34. For these reasons, it is clear that the site acts as an important area of transition between the built-up area of the village and the surrounding open countryside. The field also contributes significantly to the setting of the Dorset AONB, the boundary of which, at the nearest point, lies approximately 250 metres away to the northwest.
35. In this context, through a reduction in openness and the loss of a large arable field, the construction of up to 50 dwellings would represent a significant intrusion of built development which would extend beyond the well-defined boundaries of Charlton Down. By virtue of the site's open character and the topography of the area, the proposal would have a significant adverse effect on the rural setting of the village of Charlton Down and the wider landscape character of the locality. The sprawling nature of the development in this area of countryside would also have a detrimental impact on views from within the Dorset AONB, and would harmfully erode the setting of this designated landscape.
36. The appeal scheme would also have a significant adverse impact on short and medium-distance views enjoyed by users of the public right of way (Footpath S14/17) running past the front of the row of cottages on Herrison Road and along Back Lane, and then leading to the Dorset AONB. Pedestrians using this route are currently able to enjoy pleasant views of the undeveloped nature of the site and the wider countryside, which would be replaced with views towards a residential estate.

37. In my experience, walkers on public footpaths, particularly those approaching and within an AONB should be treated as high sensitivity receptors, with a high susceptibility of change. Notwithstanding the intervening vegetation, the houses and the scale of development would remain visible and prominent, particularly when standing on higher ground, in front of the Herrison Road cottages. From there, but also further along the public right of way, the harm which the development would cause to the rural character of the area and views of the AONB beyond would be evident.
38. I have had regard to the appellant's Landscape and Visual Impact Assessment and in particular the comments made regarding the effects of the development in the longer term. However, I consider that the magnitude of change and in turn the significance of effects have been understated, especially with regard to longer-distance views from the Cerne Valley Way to the northwest of the appeal site (Public right of way S14/18), where the landscaped character and connection of the village with the surrounding countryside is particularly strong. Despite the separation distance, the incongruous nature of the development from public right of way S14/18 would be obvious, as it would clearly sit beyond the established treeline and obscure some of the village's historic buildings. Overall, views into and out of the AONB from the public rights of way and to a lesser extent from local roads would be significantly degraded as a result of the development.
39. For the foregoing reasons, the proposed development would cause unacceptable harm to the rural character and appearance of the area and would fail to recognise the intrinsic character and beauty of the countryside, including the setting of the Dorset AONB. It would therefore conflict with Policies ENV1 and ENV10 of the WDWP LP and Policies C1, C2 and C4 of the Dorset AONB Management Plan 2019-2024. Amongst other things, these seek to protect the plan area's exceptional landscapes, taking into account the objectives of the Dorset AONB Management Plan, and ensure that development proposals are informed by the character of the site and its surroundings.
40. Additionally, the appeal scheme would fail to accord with the aims of paragraphs 124, 130, 174 and 176 of the Framework which notably seek to ensure that development proposals are sympathetic to local character and history, including the surrounding built environment and landscape setting. They also require development within the setting of AONBs to be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.

Other Matters

Planning obligations

41. As noted above, a UU was submitted by the appellant during the course of the appeal. Other than measures to address the effects of the development on Poole Harbour which are discussed in the following sub-section, the UU aims to secure the on-site provision of 35% affordable housing. It would comprise 70% affordable rented and/or social rented units, and 30% shared ownership units. This obligation would accord with the level of affordable housing required by Policy HOUS1 of the WDWP LP.
42. The UU would also secure the provision of on-site open space, whereby details of a Local Area for Play (LAP) and Local Equipped Area for Play (LEAP) would

- have to be submitted to and agreed with the Council. The open space would then have to be laid out in accordance with the agreed Open Space Plan, and maintained by a Management Company or transferred to the Parish Council.
43. Having regard to the supporting evidence presented by the Council in respect of the type of facilities available within the village, and the requirements of the WDWP LP, I agree that both a LAP and LEAP should be provided as part of the development. The wording of Schedule 2, Part 2 to the UU however suggests that either a LAP or LEAP may be provided as part of the development and would not commit the appellant's to deliver both.
44. The information submitted by the Council to substantiate the request for a financial contribution towards the maintenance of the open space appears more anecdotal rather than based on sound evidence. On this basis, the appellant considers that the inclusion of such an obligation does not meet the relevant tests set within the Framework or is CIL compliant, and it has therefore not been included within the UU. However, in the absence of further evidence to the contrary, it remains unclear how the costs associated with the future maintenance of the open space would be covered. As a result, the submitted planning obligation would not meet the requirements of Policy COM1 of the WDWP LP and the Planning Obligations Guidelines Supplementary Planning Document³.
45. Moreover, whilst the separate counterpart UUs appear to have been signed by the respective title owners, I have not been provided with copies of all of the separately signed documents, each certified by a solicitor or other suitably legally qualified person, as a true copy of the original. This raises doubts as to whether the submitted planning obligations would introduce a legally enforceable mechanism to secure these measures. However, as the appeal is being dismissed for other substantive reasons, this is not a matter which I need to consider further.

Poole Harbour

46. The appeal site lies within the catchment of Poole Harbour, which is designated as a Site of Special Scientific Interest (SSSI) a Special Protection Area (SPA) and Ramsar site, by virtue of the special interest of its wetland birds, wetland and intertidal habitats and subtidal habitats and invertebrate communities.
47. Concerns have been raised by Natural England regarding the likely significant effects which the development would have on the integrity of these sensitive areas (either individually or in combination with other plans or projects). There is sound evidence that increased wastewater associated with residential development and agriculture is causing an increase in nitrogen and phosphorous based nutrients. This is leading to increased eutrophication, which in turn has an adverse effect on water quality and compromises the integrity of internationally protected habitats sites.
48. The advice published by Natural England in March 2022 was that the Council should "carefully consider the nutrient impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.

³ Adopted February 2010.

49. The appellant is proposing to create an on-site wetland area, to ensure that the development can offset any increase in phosphates through on-site mitigation, and the UU includes a mechanism to secure the proposed mitigation package. Furthermore, as set out in the Council's Nitrogen Neutrality Poole Harbour Supplementary Planning Document (SPD), a financial contribution towards the strategic mitigation to achieve nitrogen neutrality is proposed to be collected through the Community Infrastructure Levy.
50. As I am dismissing this appeal on other substantive grounds, this is not a matter which needs to be considered further here. However, had the development been considered acceptable in all other respects, I would have sought to undertake an Appropriate Assessment, in accordance with the requirements of the Habitats Regulations.

Housing Land Supply

51. The appellant considers that the Council is unable to demonstrate a five-year supply of deliverable housing sites. However, the West Dorset, Weymouth and Portland Five-year housing land supply published in May 2022 indicates that the Council can currently demonstrate a supply of 5.85 years, and no substantive evidence has been presented by the appellant to dispute the findings of this report. Having regard to the Housing Delivery Test (2021 measurement, published in January 2022), I also note that the delivery of housing in the area exceeds the housing requirement over the previous three years. Although this does not act as a cap on housing delivery as suggested in a number of appeal decisions brought to my attention, the so-called tilted balance, as set out in paragraph 11d) of the Framework, is not triggered on these grounds.
52. Furthermore, the appellant argues that the 'tilted balance' is engaged, because Policy SUS2 of the WDWP LP, which is viewed as the most important policy for the determination of this appeal, is inconsistent with the Framework, and is therefore deemed out-of-date. I however consider that Policy SUS2 is in broad conformity with the Framework, insofar as it seeks a sensible hierarchy for directing development towards the most accessible and sustainable areas.
53. The comments regarding defined development boundaries are noted, but these, as well as related policies, would have been assessed at the time of the Local Plan's examination, and were clearly found sound by the Inspector. Whilst the definition of these boundaries may have pre-dated the plan, this was the opportunity to review them. The passage of time is not in itself sufficient to render the boundaries out-of-date. For these reasons, I consider that, on the basis of the available evidence, the tilted balance is not engaged in this instance.

Heritage and Planning Balance and Conclusion

54. The appeal scheme would make an important contribution towards housing supply and choice to which weigh moderately in favour of the development. A number of economic benefits would be derived from the proposal, firstly during the construction phase, and then in supporting local facilities. These are afforded some weight. Other presented benefits associated with the proposal are essentially intended to mitigate the effects of the development. As some of these could be of benefit to the wider public, I have nevertheless afforded them very limited weight.

55. In accordance with paragraph 202 of the Framework, the public benefits identified above have to be weighed against the harm to the special interest of the Conservation Area, to which I ascribe considerable importance and weight. The presented benefits would not outweigh the less than substantial and permanent harm which would be caused to this designated heritage asset.
56. As part of the overall planning balance, I also give significant weight to the harm which would be caused to the special interest of non-designated heritage assets. Furthermore, I have found that the proposal would fail to accord with the Council's adopted strategy for the location of new residential development, and would cause unacceptable harm to the rural character and appearance of the area, including the setting of the Dorset AONB. These considerations are afforded significant weight.
57. Overall, the identified harm would significantly outweigh the benefits offered by the appeal development. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR