
Appeal Decision

Site visit made on 6 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Appeal Ref: APP/A1720/W/20/3250150

Turret House, Hospital Lane, Portchester PO16 9LT

- 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 and Mrs A and T Lawrence and Dewey against the decision of Fareham Borough Council.
 - The application Ref P/19/0925/FP, dated 02 September 2019, was refused by notice dated 13 February 2020.
 - The development proposed is a new detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made by Mr and Mrs A and T Lawrence and Dewey. Only Mr Lawrence is listed on the appeal form. Both names are however listed on the appeal statement. I have therefore treated the appeal as having been made by both the original applicants.

Main Issue

3. The main issues are:
 - whether the site is a suitable location for development having regard to (a) the character and appearance of the area; (b) the potential for future occupants to access services and facilities by means other than use of private motor vehicles; and (c) flood risk; and
 - the effect of the development on heritage assets including: whether the development would preserve the setting of Portchester Castle, as a Grade I listed building, conserve its setting as a Scheduled Ancient Monument (SAM), and conserve the setting of Portchester Castle Street Conservation Area (the Conservation Area).

Reasons

Location

4. Policies CS2 and CS6 of the Fareham Local Development Framework Core Strategy Adopted August 2011 (the CS), seek to prioritise development of previously developed land in urban areas for housing, albeit neither expressly prohibits development elsewhere. In this regard Policies CS14 of the CS, and DSP6 of the Fareham Local Plan Part 2: Development Sites and Policies 2015

(the LP), seek to restrict the types of development which can occur within the 'countryside' outside settlement boundaries. The proposed development would be located outside the Portchester Settlement Boundary, and would not comply with any of the exceptions the above policies outline. Policy DSP40 of the LP nonetheless provides that in instances where the Council does not have a 5-year supply of housing land (5YHLS), development outside settlement boundaries will be permitted. As the Council indicates that its 5YHLS currently stands at 4.03 years, Policy DSP40 has precedence over Policies CS14 and DSP6 when taking the development plan as a whole.

5. With regard to the above the Council's concerns in relation to the location are twofold: firstly relating to the impact the development would have on the character and appearance of the area, and secondly the level of access that future occupants would have to services and facilities by means other than private motor vehicles. The Council has additionally raised a location-based objection linked to flood risk.

(a) *Character and appearance*

6. The site is a paddock attached to Turret House, which stands close to the edge of the peninsula on which Portchester is located. It currently stands alone, well separated from the suburban housing estates located to the north and west, and from the historic core of the settlement which is located to the east. Indeed, with the noted exception of Portchester Castle to the east, most of the edge of the peninsula, including land both immediately to the east and west of Turret House, consists of public or other open space. As allotments and a cemetery otherwise lie to the north, the immediate landward setting of Turret House consists of predominantly open space.
7. A driveway is located on the west side of the paddock, which partly serves as access to a stable building. The latter is incorporated within the site, but otherwise forms part of the cluster of development around Turret House. As such the paddock itself exists as a distinct open space.
8. Given the enclosure of both the site, and broader parcel of land within which Turret House is located, the extent to which its character is appreciable from outside it varies. Its openness, or rather the absence of any substantial development upon it, is nonetheless apparent in views over the site from the coastal path to the southeast and southwest, and from within Portsmouth Harbour. It is also clear in views from the cemetery and allotments to the north. Viewed within its broader setting, the openness of the site currently complements the prevailing openness of land along the peninsula edge.
9. The development would see a dwelling with an elevated floor level constructed within the paddock. Though the dwelling would be a single storey and flat roofed structure, the raised floor level would give it a greater degree of prominence than would otherwise be the case. The submitted plans indeed show the dwelling would, for the most part, stand higher than the existing boundary wall to the south, and thus presumably also the boundary wall to the east. The dwelling would therefore be visible within all the views noted above.
10. Given the visibility of the dwelling, the site would no longer be perceived as an open space. The openness of the peninsula edge would thus be appreciably eroded. The effect would be accentuated by the fact that the proposed dwelling would entail consolidation of a block of development distinctly separate from

the built-up areas around it. In this context the development would appear intrusive and have a suburbanising effect.

11. The appellants' Landscape and Visual Impact Assessment states that on-site vegetation would be retained, and new landscaping introduced, and that taking both into account, the dwelling would be hardly noticeable. However, the boundary vegetation along the south and east sides of the site mostly consists of dense masses of brambles, and the few trees and shrubs here are described as either poor or fair within the appellants' Tree Survey. Most of the other trees which stand adjacent to the site boundary, are located outside it.
12. Even in the unlikely event that the brambles were retained and maintained by future occupants, they would not screen the building given its raised position. In this regard, trees retained within the site would also be of limited value, given their condition and short estimated life spans. As trees outside the site would fall outside the control of future occupants, they too cannot be relied upon to provide long term screening.
13. Insofar as details have been provided of proposed landscaping, the intention is not to fully enclose, nor to fully screen the building. Indeed, this would run contrary to the proposed building design, which is intended to maximise the potential for views across Portsmouth Harbour. In this regard it is likely that the raised southeast corner of the building, which would house a very large window serving the main living space, would be particularly prominent in views from the southeast, including the coastal path. As such, the introduction of new landscaping would not mean that the building was hardly noticeable. Furthermore, given the high potential for light spillage through the large windows, this would be true both day and night.
14. For the reasons outlined above I conclude that the development would have an unacceptable impact on the character and appearance of the area, and that in this regard the site represents an unsuitable location for the proposed development. Thus, whilst conflicting with Policies CS14 of the CS, and DSP6 of the LP as outlined above, the development would also conflict with Policy DSP40 of the LP insofar as this requires integration with the neighbouring settlement, sensitive design, and minimisation of any adverse effect on the countryside. It would additionally conflict with Policy CS17 of the CS which states that development will respond positively to and be respectful of the key characteristics of the area, including the landscape.

(b) Access to services and facilities

15. Policy DSP40 of the LP does not explicitly set out a requirement for development to be accessible by sustainable means of travel. The broad reference it makes to the requirement for development to be sustainably located adjacent to, and well related to, the existing urban settlement boundaries, can however be reasonably interpreted as embracing this.
16. Portchester contains schools, shops, bus stops, a railway station and other services and facilities, and the streets are well provisioned with lighting and pavements.
17. The most logical and practical route from the site is along Castle Street, via the driveway serving the site, then Hospital Lane. Neither of the latter is lit, and Hospital Lane does not have a pavement. However, as it mainly serves as an

access to a small number of dwellings, it is clearly not heavily used, and it is sufficiently broad to enable pedestrians to avoid vehicles. In hours of daylight therefore, the driveway and Hospital Lane would be well suited to use by pedestrians.

18. The nearest pub lies within comfortable walking distance. Most other services and facilities would however require one-way journeys upwards of around 0.6 miles/1 km. Whilst the walk to the bus stop would lie at the upper end of what most people would consider acceptable, and therefore what many would not, the main shopping area and railway station would lie well beyond. These could nonetheless all be quickly, easily and more or less directly reached on cycle.
19. Even if future occupants were to favour use of the car over alternative travel options, the distance travelled would be little different to that of occupants of dwellings located within the settlement boundary itself. There would therefore be little difference in the level of any environmental harm that would be caused.
20. For the reasons outlined above I conclude that the site would be a suitable location for development insofar as this specifically relates to access to services and facilities by means other than private motor vehicle. Thus, notwithstanding conflict with Policies CS14 of the CS, and DSP6 of the LP as again outlined above, the development would comply with Policy DSP40 of the LP insofar as this requires development to be sustainably located adjacent to, and well related to, the existing urban settlement boundaries; Policy CS5, which states that the Council will permit development that encourages safe and reliable journeys by walking, cycling and public transport; and Policy CS15, to the extent that this states that sustainable development will be promoted by directing development to locations with sustainable transport options.

(c) Flood risk

21. With regard to flood risk, paragraph 158 of the National Planning Policy Framework (the Framework) explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. The Planning Practice Guidance further explains that this means Flood Zone 1. Development within Flood Zone 2 should be considered where there are no reasonably available sites in Flood Zone 1, and so on, in sequence.
22. In view of the above, paragraph 158 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This is therefore demonstrated by application of the sequential test.
23. The site lies within Flood Zone 2. In such cases it is necessary to demonstrate the appropriateness of development within the proposed location through the sequential test, however this has not been done. The appellants instead argue that the sequential test is only relevant where flood risk cannot otherwise be managed. This is however not the case.
24. In this regard, the fact that the dwelling would be constructed with elevated floor levels would not mean that it would be within Flood Zone 1, and therefore exempt from the sequential test. It would simply mean that it was a dwelling built with elevated floor levels built within Flood Zone 2.

25. The appellants sought advice from the Environment Agency with regard to design, and has also sought to address criteria set out in paragraph 163 of the Framework which relate to management/mitigation of risk in areas at risk of flooding. The sequential test nonetheless forms the starting point for consideration of site suitability as a means of avoiding risk in the first instance. A development where risk is avoided is inherently safer than a development where risk requires mitigation or management.
26. In view of the above, and in the absence of any evidence, I cannot conclude that there are no reasonably available sites within the Council area which are both at lower risk of flooding, and capable of accommodating a single dwelling. Consequently, the development fails the sequential test, and thus paragraph 158 of the Framework indicates that the development should not be permitted.
27. For the reasons outlined above I conclude that the appellants have failed to demonstrate that the site is a suitable location for the proposed development with regard to flood risk. The development therefore conflicts with Policy CS15 of the CS, which states that sustainable development will be promoted and secured by avoiding unacceptable levels of flood risk.

Heritage assets

28. The site lies to the west of Portchester Castle and the Conservation Area. As both a Grade I listed building, and SAM, Portchester Castle is a designated heritage asset of the highest significance. In line with the duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), it is necessary to have special regard to the desirability of preserving the setting of the listed building. I have also taken into account paragraph 193 of the Framework, which states that great weight should be given to the conservation of designated heritage assets; the significance of which derives not only from their physical presence, but also from their settings.
29. Insofar as it relates to the appeal, the special interest and significance of Portchester Castle lies in the age, and the relative intactness of its fabric, which substantially consists of Roman and Medieval material. It also resides in its prominent, and historically strategic position that the castle occupies within Portsmouth Harbour. This remains apparent, close at hand, and in long views both from and across Portsmouth Harbour, despite the growth of the settlement of Portchester itself. This is assisted by the retention of open space along the peninsula edge, which both reflects its historic openness, and provides a spatial and visual buffer from other development. As such the openness of the peninsula edge plays an important positive role in enabling the Castle's special interest and significance to be experienced and appreciated.
30. The Conservation Area incorporates Portchester Castle, and the historic core of Portchester. Insofar as it relates to the appeal, the significance of the Conservation Area lies in the castle, the layout and relationship of the settlement to the castle, and the age, composition and relationship of the buildings and spaces it contains. Given the castle's contribution to the significance of the Conservation Area, there is necessarily some overlap of the settings of each. Indeed, whilst the Conservation Area includes some open space along the peninsula edge, open space beyond it again plays an important positive role in setting both the castle and the historic settlement within their historically open contexts.

31. Through my consideration of character and appearance above, I have already found that development on the site would both appreciably, and harmfully erode the openness of the peninsula edge. It can only logically follow that in so doing it would also erode, and indeed, further suburbanise the broader open setting of Portchester Castle. This would clearly harm appreciation of the significance of Portchester Castle. Consequently, its setting would be neither preserved nor conserved, contrary to the expectations of the Act, and paragraph 193 of the Framework respectively.
32. Given that the significance of the Conservation Area is in large part vested in that of Portchester Castle, harm caused to the significance of Portchester Castle through development within its setting, can only logically translate as harm also caused within the setting of the Conservation Area. The setting of the Conservation Area would therefore not be conserved, again contrary to paragraph 193 of the Framework.
33. To the extent that direct inter-visibility between Portchester Castle and the site has also been considered, some views exist between the top of the keep and the site. These are filtered by trees outside the site. More permanent and reliable screening could potentially be achieved, and the proposed green roof might additionally act to conceal the building within these views. However, this would not alter the harm caused through loss of openness and suburbanisation.
34. For the reasons outlined above I find that the proposed development would cause less than substantial harm to the significance of both Portchester Castle, and the Conservation Area. I attach considerable importance and weight to the harm that would be caused to the significance of Portchester Castle as a listed building; great weight to the harm that would be caused to the significance of Portchester Castle as an SAM; and great weight to the harm that would be caused to the significance of the Conservation Area. In accordance with paragraph 196 of the Framework it is necessary to balance this harm against the public benefits advanced in favour of the appeal scheme.
35. The development would provide a single additional dwelling. This would make a contribution towards addressing the shortfall in the Council's 5YHLS. Notwithstanding the shortfall however, the contribution would be very small and would occur in a location that is otherwise unsuitable due to flood risk. As such, the social and economic benefits related to housing provision do not attract any weight in favour of the development.
36. The scheme would involve use of what the parties agree is previously developed land (PDL). In this regard paragraph 118(c) of the Framework otherwise states that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs. However, even if I was to agree that the site is PDL, the site is not within a settlement for development plan purposes, and nor would it fulfil any more than the general need for housing. Moreover, its definition as PDL has no fundamental bearing on its character, appearance or susceptibility to flooding, or the harm that would be caused in these regards. Consequently, the site is not otherwise 'suitable' for the development proposed. Use of PDL does not therefore attract weight as a consideration in favour of the development.
37. The appellants state the development would provide additional funds to maintain the sea defences and the coastal path which run across the frontage of Turret House. The need for additional funding for this purpose, and the

relationship between it and the development, is however unclear. No means by which such funding could be properly secured has otherwise been presented or proposed. This consideration does not therefore attract any weight in favour of the scheme.

38. Brief reference is made within the appellants' submissions to self-build housing. A CIL exemption form has been submitted on this basis. Whilst local authorities under a duty to have regard to the register of those seeking to acquire serviced plots, giving enough suitable permissions to meet the identified demand, the evidence before me is insufficient to assess the Council's current performance. Even if it was underperforming, as claimed, this consideration would not attract weight in favour of the scheme. This is because I have already found that the site unsuitable for the proposed development.
39. The appellants state that the dwelling would be carbon neutral, listing insulation and a number of other features. However, as this claim is not fully evidenced, it does not attract weight.
40. In view of my findings above, the benefits advanced in favour of the appeal scheme would not outweigh the harm that would be caused to the significance of designated heritage assets. This provides a clear reason for refusal of planning permission.
41. For the reasons outlined above I conclude that the scheme would not preserve the setting of Portchester Castle, and that it would also fail to conserve the setting of the Conservation Area. The development would therefore conflict with Policy CS17 of the CS which states that development will respond positively to and be respectful of the key characteristics of the area, including heritage assets; the Act, and heritage policy set out within the Framework.

Other Matters

42. Planning permission was refused partly on the basis that the development would fail to mitigate its likely significant effect on the complex of European sites designated within the Solent, due to increased discharge of nutrients in wastewater. The appellants have subsequently provided a Unilateral Undertaking which seeks to secure measures to address this concern. In assessing the application, the Council also identified a likely significant effect on the same European sites due to disturbance linked to recreational activity. In this regard the appellants paid a contribution in line with Council guidance. Had I been minded to allow the appeal, and the circumstances existed in which planning permission could be granted, it would have been necessary for me to examine these matters in further detail, and to undertake an Appropriate Assessment. However, as I am dismissing the appeal for other reasons, no further consideration is required.
43. Both parties acknowledge the shortfall in the Council's 5YHLS. However, with reference to footnote 6 of the Framework, my findings in relation to heritage policy and flood risk each provide clear reasons for refusing planning permission. As such, notwithstanding the Council's 5YHLS position, the tilted balance set out in paragraph 11 of the Framework does not apply.

Conclusion

44. The site would be an unsuitable location for the proposed development with regard to the character and appearance of the area and flood risk, and would

cause unacceptable harm to designated heritage assets. The development would conflict with the development plan as a whole, and there are no other considerations which alter or outweigh this finding. Thus, for the reasons set out above, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR