



Appeal Decision

Site visit made on 22 September 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2021

Appeal Ref: APP/D1265/W/21/3272183

Billy Winters Bar Diner, Portland Beach Road, Portland DT4 9JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Ferrybridge Marine Ltd against Dorset Council.
- The application Ref WP/20/00366/FUL is dated 11 June 2020.
- The development proposed is retention and first floor expansion.

Decision

1. The appeal is dismissed, and planning permission is refused.

Application for Costs

2. An application for costs was made by Ferrybridge Marine Ltd against Dorset Council. This application is the subject of a separate decision.

Procedural Matter

3. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). The main parties have had the opportunity to provide comments on the revisions therein and I have therefore had regard to the new Framework without prejudice to the main parties.

Background and Main Issue

4. The Council failed to give notice of its decision within the prescribed period. However, an assessment of the proposal's merits, accompanied by a putative reason for refusal, is now included within the Council's appeal evidence. On this basis, I consider the main issue of the appeal to be:
 - the effect of the proposal on the character and appearance of the area, with reference to the West Dorset Heritage Coast.

Reasons

5. The Billy Winters Bar Diner and the structure it occupies have temporary permission until 2026¹. The proposal seeks permanent retention of the diner in extended form. Its location is aside the boatyard at Ferrybridge Marine, just off the causeway that carries the A354 between Wyke Regis and the Isle of Portland. It is just to the west of a beach on the west shore of Portland Harbour.
6. This area is defined as Heritage Coast. Paragraph 176 of the Framework provides that within such areas, planning decisions should be consistent with the special character of the area and the importance of its conservation.

¹ Ref 11/00757/FUL

7. As one travels the causeway, the dense built environments of Wyke Regis and Portland make way for a largely undeveloped and sensitive stretch of coastline. The beaches, the water and a wide sky dominate the scene, with the rising topography of the mainland and the Isle of Portland providing a backdrop at each end, with the Isle of Portland cutting a particularly dramatic form. These picturesque characteristics lead the causeway itself to feel low and highly open to the elements, providing receptors with a sense of exposure to nature².
8. Where there is limited built form or the trappings of human activity, such as the boatyard and car parks, it is low profile and deferential, existing to provide services connected to the natural environment. For this reason, I accept the submissions contained within the appellant's Landscape and Visual Impact Assessment³ (LVIA) that these low-key structures and items do form a modest, positive aspect of the landscape character. Overall, this is an area of Heritage Coast sensitive to development which would urbanise or create vertical change.
9. The proposal would relate closely to the adjacent marine site, with a similar design language, based on an ethos of reclamation. However, its two storey and linear form would rise against the sky, offering a scale incongruous to the character of this section of coastline and its otherwise modest built form. The harm would be perceptible from the causeway and the beaches around it and would reach significant levels in close proximity in my opinion. As this is an intrinsic issue of scale and height, the harm would not be mitigated by the proposed finish materials nor the building's vegetated shingle roof.
10. Whilst the LVIA considers any adverse landscape or visual effects to be negligible or slight at worst, I consider such conclusions to be underestimates. This may be explained by the LVIA setting its baseline against the effects of the existing diner, even though it is a time limited feature of the area, and also the absence of identified viewpoints from the publicly accessible beach on the Portland Harbour shore in the immediate environs of the site.
11. It is suggested that any harm could be obviated by a condition making the permission temporary for a period of thirty years. I do not agree that to be realistic, as any such condition would not prevent long-lasting harm. Also, the Planning Practice Guidance advises that such conditions are typically employed where there is a need for a trial run, and that it will rarely be justifiable to grant a second temporary permission. It further states that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness⁴.
12. I therefore conclude that the proposal would have an unacceptable effect on the character and appearance of the area, with reference to the West Dorset Heritage Coast. It would conflict with the landscape aims of Policies SUS2, ENV1, ENV3, ENV10 and ENV12 of the West Dorset, Weymouth and Portland Local Plan 2011-2031 (adopted 2015) and the Framework.

Other Considerations

13. The appellant has referred to a previous permission for a permanent, large building at the site. This relates to ref 03/00774/FULM, granted in 2004, for 'demolition of workshop/office and ancillary buildings, and erection of

² As identified within the Weymouth and Portland Landscape Character Assessment (LCA) (2013)

³ Dated November 2018 by Nigel Pearson Associates

⁴ Paragraph: 014 Reference ID: 21a-014-20140306

showroom, office and communal use building and siteworks' (the Fallback Position). The Fallback Position building would have a greater scale and presence than that proposed. It is logical, therefore, that it would be more harmful to the Heritage Coast, if it were to be developed.

14. Given the age of ref 03/00774/FULM, its genuineness as a Fallback Position turns in the first instance on whether or not development lawfully commenced. To this end, I have a notice from the Council from January 2010 which states, amongst other things, that the time condition (condition 1) is discharged as development has commenced. However, the evidence or reasoning for this conclusion is not before me. In any case, the notice does not allow for lawful commencement to be conclusively presumed, which is the preserve of a certificate of lawful use or development pursuant to section 191 of the Act.
15. This lack of certainty is compounded by the multiple uses of the Fallback Position, which does not correspond with the proposed, singular restaurant use. It is also unclear whether the provision of the building is actually feasible when I have no evidence of interest for its occupation for the other uses described and shown. Indeed, it is stated that the appellant does not wish to complete that development. For these reasons, the evidence before me does not provide adequate assurance that the Fallback Position is a real prospect in the event I were to dismiss the appeal. It is therefore of limited weight in my assessment.

Other Matters

16. The site is near the Chesil Beach and Fleet Special Area of Protection and Special Area of Conservation (the European Sites). I cannot rule out in the first instance that, with the potential for the extended facility to draw visitors here permanently, the scheme would have likely significant effects on the integrity of the European Sites through increased recreational use. If I have been minded to allow the appeal, it would have been necessary for me to consider this matter within an Appropriate Assessment. However, as I am dismissing it for other reasons, I have not done so. I have similarly had no cause to assess the flood risk implications related to the site's presence within Flood Zone 2 nor the concerns raised by interested parties with regard to highway safety.

Planning Balance

17. The significant harm to the character and appearance of the area, with reference to the West Dorset Heritage Coast, draws the scheme into conflict with the development plan when read as a whole. The social, environmental and economic benefits of the proposal and the Fallback Position are each of limited weight and do not combine to outweigh the harm identified.
18. Consequently, there are no other considerations, including the Framework, which outweigh the conflict with the development plan in this case.

Conclusion

19. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR