



Appeal Decision

Site visit made on 25 March 2022

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd May 2022

Appeal Ref: APP/D1265/W/21/3284106

12 Folly Lane, Wareham BH20 4HH

- 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 Mr Mulholland (Purbeck Design Consultants Ltd) against Dorset Council.
 - The application Ref 6/2021/0168, is dated 12 March 2021.
 - The development proposed is "to sever plot from existing property and erect a single detached property".
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Decision

1. The appeal is dismissed and planning permission "to sever plot from existing property and erect a single detached property" is refused.

Preliminary Matters

2. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment on this matter as part of the appeal process, and I have had regard to the updated Framework in determining this appeal.
3. The Council's submissions have referred to the emerging Purbeck Local Plan, which was submitted for examination in January 2019. As it has yet to be found sound, very limited weight can be afforded to this emerging Local Plan.
4. 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.

Main Issues

5. Having regard to the Council's putative reasons for refusal, the main issues are:
 - The effect of the proposal on designated heritage assets, including the Wareham Conservation Area and the Wareham Town Walls, a Scheduled Ancient Monument (SAM);

- The effect of the proposal on archaeological remains associated with Wareham Town Walls SAM; and
- The effect of the proposal on the living conditions of the occupiers of no 27 St Martin's Lane, with particular regard to outlook.

Reasons

Heritage assets

6. Located in an established residential area, the appeal site currently forms part of the garden area of no 12 Folly Lane. There is no doubt that the site lies in a sensitive position, not only by reason of its location within the Saxon and later medieval walled town of Wareham, which is designated as a conservation area, but also its proximity to the Wareham Town Walls SAM. The special interest of Wareham Town Walls derives primarily from their substantial historic significance, as it includes part of the defences which define the Anglo-Saxon burh of Wareham, but also part of a motte and bailey castle with shell keep. The defences were designed to provide views across the surrounding area, whilst appearing as impressive and dominating features in the wider landscape.
7. Wareham was one of many fortified places attributed to King Alfred, which had been established in Wessex in response to Danish incursions. Importantly, Wareham is the only burh in England for which defences remain intact. The form of the Town Walls SAM shows that defences were strongly influenced by military considerations, but also reflected the status of the settlement as an important regional centre. Historic England (HE) rates Wareham Walls earthwork ramparts as especially notable for their impressive size, their good survival and legibility as archaeological features, and their excellent public access. As such, the walls provide an important focus of public heritage interest.
8. For these reasons, the Wareham Town Walls SAM holds very high historic importance, though the monument and its setting have somewhat been compromised by unfortunate interventions in more recent times. Folly Lane is adjacent to the north walls which, as noted by HE, are significantly affected in places where development overlies or encroaches on the immediate setting of the ramparts. However, it is important that the harm caused by modern developments within the setting of the Town Walls provides no justification for a further erosion of the monument's significance.
9. The site also forms part of the Wareham Conservation Area, which, insofar as relevant to this appeal, owes much of its special interest to its history as one of the most important settlements in Saxon Wessex and its significance as one of the earliest post-Roman planned settlements. The Wareham Conservation Area Appraisal Document identifies the earth walls as a particularly notable aspect of the special historic interest of this area. By virtue of its proximity to the Town Walls SAM and its largely undeveloped appearance, the appeal site also makes an important contribution to the character and appearance of the Wareham Conservation Area.
10. The construction of an additional dwelling in this location, so close to the SAM, would inevitably encroach upon the open and spacious setting which characterises the area surrounding the Wareham Town Walls. The proposed built form would, in its own right and cumulatively with other modern

developments in the vicinity, harmfully erode the contribution which the site makes to the setting of the Wareham Town Walls SAM, and subsequently the ability to understand and appreciate the significance of this heritage asset. By virtue of the site's contribution to the Wareham Conservation Area, it follows that the development would also cause harm to this designated heritage asset.

11. For the foregoing reasons, the proposed development would fail to preserve the special interest of the Wareham Town Walls SAM and the character and appearance of the Wareham Conservation Area. It would therefore be contrary to Policies D and H of the Purbeck Local Plan Part 1 (LPP1) and the Purbeck Design Guide Supplementary Planning Document (SPD). These notably expect development proposals to conserve the appearance, setting, character, interest, integrity, health and vitality of landscape and heritage assets.
12. The appeal scheme would also conflict with Policy GS1 of the Wareham Neighbourhood Plan (NP), which seeks to protect the Wareham Town Walls SAM from harmful development. There would however be no conflict with Policy LDP2 of the Wareham NP, which focuses on the design of new development outside Wareham Conservation Area, and is therefore not directly relevant to the proposal before me.

Archaeological Remains

13. Due to the site's proximity to Wareham Town Walls SAM, there is potential for archaeological remains dating from the Saxon, Medieval and post-Medieval periods to be disturbed by the groundworks which would be required as part of the construction of the proposed development. Whilst my attention has been drawn to the negative results of an archaeological evaluation carried out by Bournemouth Archaeology within proximity to the appeal site, I also understand that archaeological remains dating from the Medieval period were found at 19 St Martin's Lane by Terrain Archaeology in 2013.
14. The appeal proposal is supported by a Heritage Statement and Archaeological Desk-Based Assessment, but limited information has been submitted to support the claim that the site is not located in the area of the defensive earthwork and consequently, that there would be no archaeological deposits of potentially national importance. The assessment and evaluation should take place before the grant of planning permission, in order to predict the presence of remains and assess their potential significance. Accordingly, the matter could not be dealt with appropriately by imposing a condition.
15. In the absence of further substantive evidence to the contrary, there could be significant archaeological deposits of national importance below the made up ground, which could be damaged or destroyed as part of the construction of the development. By reason of the potential archaeological and historic interest of the site, a precautionary approach is therefore justified in this particular instance. Furthermore, the construction of a dwelling on the site would render the site inaccessible for future archaeological investigation.
16. Given the above, there is no certainty that the proposal would not cause unacceptable harm to important archaeological remains. Consequently, the proposal would be contrary to Policy LHH of the LPP1, which notably requires the Council to assess the direct, indirect and cumulative impacts of proposals relative to the significance of the heritage asset affected, and balance them against other sustainable development objectives.

Living conditions – Neighbouring occupiers

17. The appeal site shares its rear boundary with no 27 St Martin's Lane (no 27). The area to the rear of the dwelling is largely laid out as a patio. Having regard to the available evidence and my own observations, it is evident that this area is used for outdoor recreation purposes by the occupiers and forms an essential part of their enjoyment of the property. Furthermore, the rear elevation of this neighbouring bungalow facing towards the appeal site includes two large windows serving habitable rooms.
18. The width and overall height of the proposed dwelling would represent a substantial addition within such close proximity to the boundary shared with no 27, creating an unneighbourly and visually intrusive form of development. As a result, the proposal would appear overbearing and oppressive to the occupiers of this neighbouring property, and would also adversely affect their enjoyment of their private outdoor space.
19. For these reasons, I find that the appeal scheme would cause unacceptable harm to the living conditions of the occupiers of no 27, having particular regard to outlook. The proposal would therefore fail to accord with Policy D of the LPP1, paragraph 39 of the Purbeck Design Guide SPD and Section 12 of the Framework. These notably seek to avoid and mitigate effects of overshadowing, overlooking and other adverse impacts on local amenity, but also create places with a high standard of amenity for existing and future users.

Other Matters

20. The appeal site lies within proximity to areas designated as European protected sites, which include Dorset Heathlands and Poole Harbour. The Council considers that the proposed development could have a likely significant effect on the integrity of these sensitive areas (either individually or in combination with other plans or projects) by reason of additional recreational pressures and increased nitrates levels, unless suitable mitigation is provided.
21. As the appeal is being dismissed on other substantive grounds, these are not matters which need to be addressed further here. However, had the development been considered acceptable in all other respects, I would have sought to explore the necessity for undertaking an Appropriate Assessment, to ensure the proposal's compliance with Habitats Regulations.

Heritage Balance

22. Paragraph 199 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
23. The appeal scheme would cause unacceptable harm to the special interest of the Wareham Town Walls which, by reason of their designation as a SAM, is among the designated heritage assets of highest importance nationally. Furthermore, limited information has been provided regarding the effect of the proposal on potential archaeological remains associated with the SAM. As noted above, the development would also fail to preserve the character and appearance of the Wareham Conservation Area. Consequently, I give each incidence of harm considerable importance and weight.

24. The proposal would not lead to a total loss of significance and would not subsequently cause substantial harm to the special interest of the assets, including their setting. However, having regard to the significance of the affected assets as a whole, the magnitude of the harm would nevertheless be less than substantial. In accordance with paragraph 202 of the Framework, the harm identified should therefore be weighed against the public benefits of the proposal. The construction of a dwellinghouse may be regarded as a public benefit. However, overall, I have been presented with no public benefits which would outweigh the harm resulting from the proposed development.

Planning Balance and Conclusion

25. Paragraph 11 d) of the Framework, as directed by Footnote 8, states that the policies which are most important for determining the application should be considered out-of-date, and planning permission should be granted. This includes situations where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites, or where the Housing Delivery Test (HDT) indicates that the delivery of housing was substantially below (less than 75%) the housing requirement over the previous three years.
26. The Council's submissions have referred to the 2020 HDT results for the Purbeck area (e.g. 74%). However, the 2021 HDT results show that the delivery of housing in the area now exceed the 75% threshold (e.g. 76%). The Council is also able to demonstrate five years of housing land supply. Consequently, the presumption in favour of sustainable development does not therefore need to be applied.
27. Even if the delivery of housing remained substantially below the area's housing requirements, the presumption would not need to be engaged here, as the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed in Footnote 7 to the Framework, such areas or assets of particular importance include designated heritage assets.
28. There is no doubt that housing delivery in the Purbeck area remains an issue, and the construction of an additional dwelling would make a contribution towards supply and choice, whilst also supporting the local economy to some degree. The appellant suggests that there is a need for this type of affordable house, but no mechanism, such as a planning obligation, has been brought to my attention to secure this type of residential development in land use planning terms. This therefore limits the weight which can be ascribed to this consideration.
29. Against that, I have found that the proposed development would cause unacceptable harm to designated heritage assets, and have a detrimental effect on the living conditions of neighbouring residents. For these reasons, the harm identified would outweigh the benefits associated with the proposal.
30. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. Given the above, the appeal fails and planning permission is refused.

S Edwards

INSPECTOR