



Appeal Decision

Hearing held and site visit undertaken on 13 and 14 July 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/D1265/W/23/3319685

Land at Ferryman's Way, Weymouth, Dorset DT4 9GE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant outline planning permission.
 - The appeal is made by Oliver Adderley of Ilchester Estates against the decision of Dorset Council.
 - The application ref. P/OUT/2022/02620, dated 31 March 2022, was refused by notice dated 3 October 2022.
 - The development proposed is described on the application form as '... the demolition of all existing structures and redevelopment of the site for the construction of residential apartments...'
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposal is in outline with only certain details of access for determination. Appearance, landscaping, layout and scale are reserved for future consideration ('reserved matters'). Any indications as to reserved matters, including a landscaping plan submitted on 10 July 2023,¹ are illustrative.
3. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.² The development plan includes policies of the West Dorset, Weymouth & Portland Local Plan (adopted October 2015). The Local Plan remains, notwithstanding the establishment of Dorset Council in 2019 amalgamating former authorities. Work on a Local Plan review, and also towards a Weymouth neighbourhood plan, is yet nascent.
4. The appellant does not argue that the policies which are most important for determining the application are out of date with reference to paragraph 11.d) of the National Planning Policy Framework ('NPPF'). There is nothing before me to even hint at that.³ There is no contention that the Council cannot demonstrate a five year land supply of deliverable sites for housing relative to needs ('5YHLS'), and housing delivery test data ('HDT') is healthy.⁴

¹ Plan 19 137 PA02 Revision A, the introduction of which was objected to by the Council (notwithstanding that James Lytton-Trevers had helpfully sourced comments from the Council's landscape team on it).

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

³ Notwithstanding subsequent changes to the Town and Country Planning (Use Classes) Order 1987 as amended, notably via the Town and Country Planning (Use Classes) (Amendment) Regulations 2020.

⁴ In respect of the former authorities of Weymouth and West Dorset, HDT 2021 data indicating delivery at 114% of the number of homes required over the preceding three years.

Main issues

5. The main issues are the effects of the proposal on employment land availability and whether any vulnerability to flooding would be suitably addressed.

Reasons

Employment land

6. There is no dispute that the proposal falls to be considered under Local Plan policy ECON3 'Protection of other employment sites'. Appropriate protection of employment land is an objective compatible with elements of the NPPF regarding building a strong, competitive economy. There is, however, a different picture in respect of employment land availability and supply compared to housing as indicated above.
7. Councillor David Northam highlighted that monitoring in West Dorset, Weymouth & Portland's former administrative areas points towards a declining availability of employment land recently.⁵ That was corroborated by the Council, who also pointed towards the prevailing trend for retail uses to be sought in place of office, industrial and storage and distribution uses.⁶ Albeit in respect of a specific site, the appeal proposal itself reflects pressures for housing provision in place of employment land.
8. That trend appears to be longstanding. Paragraph 3.2.3 of the Local Plan sets out how there were at that juncture 'declining job numbers in the plan area'. That is despite the Local Plan policy SUS1 looking towards provision of about 775 dwellings annually. That trend appears particularly acute in Weymouth. Local Plan table 3.1 indicates that there is a marked imbalance in the location of housing relative to employment, resulting in a 'significant amount of outward commuting'. Setting market pressures or viability aside, there is relatively more pressing need for employment here than for housing.
9. Set against that context Local Plan policy ECON3 defines, under criterion ii), three circumstances where the redevelopment of employment land for non employment uses may be acceptable.⁷ Those circumstances are set out in bullet points, each separated by the conjunction 'or'. Therefore on a plain reading, compliance with any one bullet would mean that the proposal would be acceptable (within the terms of that bullet).

Local Plan policy ECON3, criterion ii), first bullet⁸

10. There is some ambiguity as to whether the appellant argues that the present use of the site causes 'significant harm'. Regardless, the site amounts to some 0.26ha. It is part of Ilchester Estates' wider holdings.⁹ Since before 2017 the site has been a base of operations for Quest Marine Underwater Services Ltd. I

⁵ Whilst the employment domain draws from various indicators, that may be a factor in relatively high levels of deprivation in that respect reflected in Indices of Multiple Deprivation.

⁶ Local Plan policy ECON2 iii) making provision in respect of retail uses within key employment sites, the legislative categorisation of retail and offices differing now to in October 2015 as footnoted above.

⁷ Notwithstanding that accordance 'with other planning policies' is also required, and that the development plan must be considered as a whole in any event.

⁸ - the present (or where vacant or derelict, the previous) use causes significant harm to the character or amenities of the surrounding area and it has been demonstrated that no other appropriate viable alternative employment uses could be attracted to the site; or'

⁹ In part shown on a plan entitled 'East Fleet – Estate Registered Title', accepted on 13 July 2023.

understand Quest is engaged in marine construction, salvage and transportation (amongst other activities). I am told they employ 12 people on a full time basis, drawing in others as projects require. As far as anyone at the hearing could remember, the site has always been used as some form of boatyard since its reclamation from the sea.

11. The site is quasi-industrial in nature, haphazard and unkempt. There are various utilitarian buildings, structures and shipping containers set around the periphery of a roughly level working yard. At the time of my site visits there were boats on site in varying states of repair. There was also various plant and machinery, marine equipment and materials openly stored. Around the northern, western and southern sides of the site land is banked up and covered by ruderal vegetation. A metal security fence demarcates the boundary. As alluded in the representation on behalf of David Bennett, CEO of the Waterside Group who own Chesil Beach Holiday Park to the north,¹⁰ it is fair to say that the site has developed a more industrial character over recent years.
12. The foregoing is not, however, to say that the site causes significant harm. That is not the case visually. The site has an appearance or character commensurate with its function. It is broadly consistent with adjacent land to the west also owned by Ilchester Estates and leased to the Crab House Cafe (which, I saw, has oyster beds within the Fleet Lagoon close by). The triangle of land there is similarly somewhat unkempt, comprising various originally utilitarian structures and storage. In respect of the Cafe, the prevailing character of the site is a component of its evident commercial success rather than detracting from it. A ramshackle and organic character speaks to authenticity, whether of seafood or industry. Nothing is artificial.
13. Councillor David Northam explained that, for some, the nature of the site and its surroundings reflect a rare survival of the area's past. Former uses have given way successively to residential. That includes Passage Close immediately to the east and land beyond on the opposite side of Portland Beach Road (A354). Properties at Passage Close, I understand built at some point after 2003, occupy the location of a former factory. Dwellings between Dumbarton Road and Smallmouth Beach are where a torpedo factory once was. Even were I to accept that the site is in need of some improvement or tidying, in itself a value judgement, that is not intrinsically reliant on the proposal before me.¹¹
14. A short distance southwards, across partially-consolidated Ferryman's Way, is a grassed embankment. Beyond that, where grass gives way to shingle, is the south west coastal path and thereafter the Fleet Lagoon. After that falls Chesil beach running to the Isle of Portland. The Fleet flows to and from Portland Harbour beneath the A354, between the site formerly occupied by the recently-demolished Ferrybridge Inn and the Ferrybridge Slipway.¹² As opposed to the private slipway to the Lagoon opposite Passage Close, the Ferrybridge Slipway is commercial. I am told that it, and the boatyard by it, are used in conjunction with the appeal site.

¹⁰ Richard Burgess Associates Ltd., 23 August 2022.

¹¹ For example maintenance of the site may be a stipulation in a lease, noting that the local planning authority also have powers in this respect under section 215 of the 1990 Act.

¹² Planning permissions ref. 14/00921/OUT and WP/18/00388/RES and WP/20/00700/NMA relating to the site of the Ferrybridge Inn.

15. Here coterminous, the boundary of the Chesil (Beach) and the Fleet Ramsar Site, Site of Special Scientific Interest ('SSSI'), Special Protection Area ('SPA') and Special Area of Conservation ('SAC') falls by the coastal path. It appears the Dorset and East Devon Coast World Heritage Site ('WHS') shares the same boundary also. The appellant's Ecological Impact Assessment Report notes that the Portland Harbour SSSI falls some 250m away, with four non-statutory sites also present within one kilometre of the site.¹³ In that context the appellant argues that the proposal would remove 'the risk of contamination from leaching chemicals from the breaking down of boats which is detrimental to this ecologically sensitive location.' What is termed a Market Appraisal,¹⁴ similarly refers to the existing nature of activities here as 'a contaminating use'.
16. There is, however, little force in that. The appellant's Phase 1 Desk Study indicates that naturally occurring contamination, that associated with reclaimed land and the use of a site as a shipyard are 'not considered prohibitive for the development and can be effectively managed...'.¹⁵ No express provision for contamination or remediation is made in the appellant's Financial Viability Appraisal ('FVA').¹⁶ There are, in any event, separate provisions to address contamination and pollution.¹⁷ There is therefore nothing of substance to indicate that there is a risk of significant contamination being present, or occurring. An appropriately-worded condition could therefore reasonably and proportionately address any contamination and remediation.
17. I could lean towards the appellant's apparent position in paragraph 15 above, in effect ascribing greater significance to the benefits of the scheme in terms of addressing contamination (whilst that would run counter to the findings of the Phase 1 Study). Were I to do so, I would need to note that the Study recommends 'further investigation is required to refine the risk assessment and validate the conceptual site model'. That would lead me to relevant elements of the PPG which sets out that unless an initial contamination assessment clearly demonstrates that the risks can be 'can be satisfactorily reduced to an acceptable level, further site investigations and risk assessment will be needed before the application can be determined'.¹⁸ That is not, however, my view.
18. More broadly David Bennett has referred to complaints in respect of the operations on site in terms of noise and disturbance (including in respect of dust and smell). Any comparable employment use will generate a certain level of noise and disturbance, including that potentially associated with vehicular movements, engineering and the operation of plant and machinery. There are, however, no Council records of complaints being made to them in respect of statutory nuisance (nor is there any acoustic assessment before me). Moreover noise generated on site will likely occur during typical working hours; there may be limitations stipulated via condition on an existing planning permission in that and other respects, or on any future employment use if applied for. There is also a fair level of background noise, or sound, here in any event,

¹³ Abbas Ecology, ref. AE/4555, October 2021, table 1.

¹⁴ Appellant statement of case, appendix C, a letter on behalf of Symonds & Sampson LLP of 27 March 2023.

¹⁵ Lustre Consulting, ref. 3565 - 210113 - AP, January 2021.

¹⁶ Section 106 Management, 30 March 2023, albeit I heard that some overarching contingency has nevertheless been factored to the residual land valuation.

¹⁷ Notably under the Environmental Protection Act 1990 as amended.

¹⁸ Reference ID: 33-007-20190722.

arising by virtue of the use of the A345 and the Crab House Cafe. In all likelihood Chesil Beach Holiday Park will itself generate some noise from time-to-time.

19. Drawing together my reasoning above, I acknowledge that the existing site is untidy. There may be some benefits of the scheme in respect of improving its orderliness, environmentally (principally in reducing the potential for unforeseeable pollution), and in terms of reducing noise and other disturbance. However there is nothing to substantiate that the existing use causes significant harm. There is similarly no robust evidence of the absence of 'viable alternative employment uses', which would also be required to achieve compliance with the first bullet of Local Plan policy ECON3, criterion ii).¹⁹
20. In that respect the Market Appraisal sets out that Symonds & Sampson LLP 'could with some difficulties let the property'. That appears to be based on their diligent care to Ilchester Estates as a client.²⁰ Albeit based on capitalising a differential rental return and yield, both the appellant's FVA, and the Council's commissioned Review ('FVAR'),²¹ return a positive Benchmark Land Value within the terms of the PPG.²² Theoretically the site may therefore be viably operated by someone, even though it may not be ideal in terms of a wider asset management or portfolio strategy. In that respect I note that an 8% rental yield, as in the appellant's FVA, exceeds the forecast 7.85% return or profit on Gross Development Value ('GDV') forecasted to result by undertaking the development proposed (albeit that the amount and timing of that return on GDV differs from an ongoing rental concern).

*Local Plan policy ECON3, criterion ii), second bullet*²³

21. I am told by the appellant that more modern marine-related provision exists at Osprey Quay by Portland Marina nearby. There is commercial slippage to the Harbour there and, I understand, some capacity for new or incoming businesses. I accept direct commercial Harbour access may be advantageous to marine-based businesses, as opposed to other employment uses with comparable requirements and implications. Alternatively, the appellant argues that practically Quest Marine could relocate and consolidate operations at the Ferrybridge Slipway boatyard (and as such no jobs would be lost).
22. However that evidence falls short of demonstrating that there is 'a substantial over-supply of suitable alternative employment sites...'. There is no robust evidence as to the existing capacity at the Ferrybridge Slipway boatyard site, which must inevitably at some point reach a jobs density threshold beyond which further operations cannot be accommodated. If anything, the trends referred to in paragraphs 7 and 8 above point to the limited availability of

¹⁹ Let alone of any marketing or 'real effort' to achieve an alternative employment use sought via Local Plan paragraphs 4.3.5 and 4.3.6, acknowledging that the supporting text to a policy does not have the same force as the policy itself.

²⁰ Noting that the Market Appraisal explains 'there will always be demand for a scrappy site like this because no other landlords will want such occupiers. Such occupiers have a propensity to go bust and leave the owners with the aftermath of mess. As professional agents and advisors we have great difficulty in recommending such a use to a client as we know it will have implications beyond a normal landlord and tenant relationship.'

²¹ Dixon Searle Partnership, ref. DSP23618C, July 2023.

²² Where Existing Use Value ('EUV') in the former is given as £400,000 and 'EUV+' reflecting a premium for the landowner as inducement to sell in the latter as £222,750. I note that the alternative EUV figure given in the former of £650,000 is in error.

²³ 'a substantial over-supply of suitable alternative employment sites is locally available; or'

alternative sites, the value of ensuring employment sites are located close to Weymouth, and to the importance of addressing a persisting imbalance of more houses relative to fewer jobs.

*Local Plan policy ECON3, criterion ii), third bullet*²⁴

23. The factors set out in paragraph 19 above may fairly be said to represent limited community benefits. If effected, the proposal would deliver up to 20 or 25 dwellings. Local Plan policy SUS1 expresses the housing requirement as 'in the region of' rather than as a definitive, or capped, number. Building and maintaining houses generates employments, and future residents would bring trade to local services and facilities. Those benefits would, to some indeterminate extent, be localised. However they cannot be said to amount to 'important community benefits', and must be considered relative to the 'disbenefits' of reduced localised employment availability.²⁵
24. In the light of the FVAR, the Council no longer maintained their sixth reason for refusal. Nevertheless no affordable housing is intended to be provided relative to the 35% sought via Local Plan policy HOUS1 on the basis of viability. Affordable housing might, more squarely, fall within the definition of an important community benefit (i.e. providing housing to those unable to access market housing but meeting eligibility requirements for accommodation here).
25. Moreover the dwellings proposed are inherently 'private'. There is no indication that any of the site is intended to be publicly accessible, nor is any provision made for play (as there is at Passage Close). Whilst the redevelopment of the Ferrybrige Inn site is housing-led, that proposal nevertheless also includes a 'pub/cafe/restaurant'. Whilst there are challenges with implementation there, the mixed use nature of that proposal would generate some local employment, alongside a leisure use that may be of benefit to the local community. For the foregoing reasons I therefore conclude that the proposal conflicts with the relevant provisions of Local Plan policy ECON3 and NPPF paragraph 81.

Vulnerability to flooding

26. Local Plan policy ENV5 seeks to steer development towards areas at lowest risk of flooding and, failing that, to ensure that adequate mitigation is in place. Similarly NPPF paragraph 159 seeks to avoid inappropriate development in areas at risk of flooding. That is including via the operation of the 'sequential test' in NPPF paragraph 162 and, in the eventuality that the sequential test is passed, the 'exception test' (NPPF paragraphs 163 to 165). NPPF footnote 55 sets out where a site-specific flood risk assessment should be undertaken, including 'land identified in a strategic flood risk assessment as being at increased flood risk in the future'. The proposal is supported by a Flood Risk Assessment ('FRA'),²⁶ and a Flood Risk Technical Note ('FRTN').²⁷

²⁴ '- redevelopment of the site would offer important community benefits or no significant loss of jobs/ potential jobs'.

²⁵ By resulting in an overall reduction, albeit modest, of employment land the proposals cannot be said to result in no net loss of 'potential jobs' notwithstanding the appellant's arguments regarding potential relocation to Osprey Quay or the Ferrybridge Slipway boatyard.

²⁶ Cole Easdon Consultants Limited, ref. 7369, March 2022.

²⁷ Cole Easdon Consultants Limited, ref. 7369/01, March 2023, Appendix D to the appellant's statement of case.

27. As set out in the FRA the site is currently within flood zone 1, i.e. at low probability of flooding with a less than 0.1 annual probability of fluvial or sea flooding, albeit with a 'significant (theoretical) prevailing risk from surface water flooding' related to higher neighbouring land.²⁸ Unsurprisingly southwards of the coastal path is a strip of flood zone 2 and 3 land (at medium or high probability of flooding). Whilst the majority of the site is relatively level, it is surrounded by higher land on all sides. Site levels at the yard are typically around 1.8 to 1.9m Above Ordnance Datum ('AOD'), with 2.08mAOD recorded at the site access off Ferryman's Way at the south-western corner.²⁹
28. Heading eastwards along Ferryman's Way, the topography only exceeds 2.08mAOD around the access to Passage Close, rising thereafter towards the A354. A low brick wall forms the eastern boundary of the site with Passage Close. Ground levels at Passage Close are higher, rising from around 2.35mAOD to the south nearer nos. 1 and 7, to about 2.97mAOD to the north. The land also rises from the site access towards the Cafe; the bank around the southern boundary of the site reaching some 3.56mAOD at the boundary there.
29. The land also rises significantly towards Chesil Beach Holiday Park, approaching vertically. Stood by the reception building there, the ground level aligns approximately with the eaves of what is referred to in the information before me as the Warden's House. There you are likely above the highest point of any structure on site, some 7.31mAOD. The Warden's House, a moniker, is a substantial two storey dwelling set to the north-east of the site next to Passage Close (vacant at the time of my site visit, I understand used in connection with the Holiday Park). There is also an embankment beyond Ferryman's Way before the coastal path to the south, dotted with boulders. The FRA sets out that embankment is somewhere between 3.06 and 3.38mAOD. In that context, if water enters the site it will have quite some difficulty getting out.
30. Allowing for climate change, looking forward a century or so, the FRTN sets out that the still water tidal flood level is likely to rise significantly. A rise of 1.36m is forecast. That results in a potential still future flood level of 3.76mAOD compared to 2.40mAOD currently. Referring to the Environment Agency's climate changes allowances guidance, last updated 27 May 2022, the FRTN applies a 10% margin to 1.36m to account for wave action.³⁰ That gives a figure of 1.50m. That added to 2.40mAOD gives a wave action adjusted flood figure of 3.9mAOD. The FRTN goes further in applying an Extreme Wave Height Allowance ('EWHA'). That has been calculated by adding 10% to the figure of 1.50m referenced above, giving a figure of 1.65m. That added to 2.40mAOD gives a potential EWHA flood level of 4.05mAOD.
31. Rationally, as 4.05mAOD exceeds the highest level of the embankment at 3.38mAOD, the FRTN takes no account of it. Therefore currently an extreme tidal flooding event may result in water levels at the site access of about 0.32m, with climate change allowance added that is likely to rise to 1.68m or to 1.97m with the EWHA factored in. There is no dispute that the latter represents 'danger for all', i.e. including occupants and emergency services.³¹

²⁸ Paragraph 3.20, figure 3.2.

²⁹ As shown on plan 19 137 F01 at appendix 5 to the FRA.

³⁰ The parameter specified via table 2 in respect of 2056 to 2125 based on a 1990 baseline.

³¹ Environment Agency R&D Technical Report FD2320/TR2, October 2005.

The sequential test

32. The proposal is supported by a Sequential Test Statement ('STS').³² That considers potentially 'reasonably available' sequentially preferable sites including with reference to the PPG and Environment Agency Guidance.³³ Through engagement with the Council the STS draws from the former administrative boundaries of West Dorset, Weymouth & Portland (rationally aligned with the Local Plan and the evidence underpinning it, notably the Strategic Housing Land Availability Assessment 'SHLAA').³⁴
33. The STS, a detailed document, considers 120 sites. Paragraph 6.1.2 sets out that although there are various 'sequentially preferable' sites in terms of vulnerability to surface water flood risk alone, none are judged capable of delivering comparable development to that proposed here for other reasons. 'Disaggregation', i.e. that a series of smaller sites and/ or part of a larger site could be capable of accommodating the proposed development, whilst not reflecting market realities of how housing is delivered, is nonetheless a reasonable concept to apply given the overarching approach in the NPPF to avoiding flood risk.³⁵
34. Commentary on the foregoing STS sites is in appendix 2 of the Council's statement of case. In many instances there is agreement that certain sites are unlikely to come forward, for example those outwith a development boundary, occupied by an employment use or with heritage constraints. Those sites might be characterised as being subject to 'hard' policy constraints. However there are also a significant number of other sites subject to 'soft' policy constraints, or ones where a discretionary judgement will be needed on any application for permission. The latter include some sites within settlement boundaries or site allocations,³⁶ which cannot in my view necessarily be ruled out from being reasonably available.³⁷
35. Similarly there is nothing to indicate that Local Plan allocations DOR8 and DOR9 could not accommodate comparable development (also sequentially preferable in terms of vulnerability to surface water flooding). The absence of a 5YHLS is not a relevant consideration for the sequential test for individual applications. However the converse is not true. There is no indication that the Council are unable to demonstrate a 5YHLS. As above, HDT is healthy. I heard that many, if perhaps not all, sites where housing has been delivered and is forecast to be deliverable over the coming five years, are sequentially preferable. That is setting aside that the STS considers only surface water flooding, notwithstanding that NPPF paragraph 159 refers to 'directing development away from areas at highest risk (whether existing or future)', my emphasis.

³² Avalon Planning & Heritage, ref. A2035, December 2021.

³³ The latter last updated 28 February 2017.

³⁴ The SHLAA published 2014, updated 2015.

³⁵ As articulated in PPG Reference ID: 7-028-20220825, consistent also with the position of the Inspector in respect of appeal ref. APP/D1265/W/22/3299374 brought to my attention by the Council.

³⁶ Sites 5.11 and 5.12 being within a settlement boundary, 5.9, 5.20, 5.22 being within site allocations.

³⁷ Noting that reasonably available, as referenced in PPG Reference ID: 7-028-20220825, differs from the definition of deliverable in the NPPF.

The exception test

36. As above the exception test is only reached if the sequential test is failed, which in my view is the case. Nevertheless, with reference to NPPF Annex 3, general industry and storage and distribution are defined as 'less vulnerable' to flooding compared to dwellings which are 'more vulnerable'. Matthew Pearce, on behalf of the Environment Agency, drew my attention to table 2 of the PPG which tabulates flood zones with flood risk vulnerability classifications.³⁸ That, alongside a reading of NPPF paragraphs 163 to 165, indicates that the exception test may not apply in this instance. As in that table the exception test only applies in respect of more vulnerable uses in flood zone 3a. Nevertheless NPPF paragraph 164 describes one part of the exception test as to ensure that 'the development will be safe for its lifetime...'. Things change over a lifetime. I note NPPF footnote 55 also sets out how flood risk may change over time, which is evidently the case here.
37. Nevertheless, setting the application of the exception test aside, both the FRA and FRTN recommend flood risk mitigation measures. Those include that the finished ground floor level is set no lower than 4.67mAOD, that no habitable accommodation is provided any lower, that flood and wave resilient construction measures are adopted, and that there is an agreed evacuation plan. Those measures are evidently sensible, albeit as with contamination there appears to be no specific account taken of them in the FVA. The appellant also refers to Dorset Council being a Category 1 Responder under the Civil Contingencies Act 2004 as amended and also states that all residents will be required to subscribe to the Environment Agency's warning service. The Council has also rationally suggested a condition requiring that warning notices are displayed on site.
38. The Environment Agency nevertheless maintains an objection to the proposal on the basis that the methodological basis for calculating future eventualities is insufficient. Specifically they argue that the EWA should be established based on modelling (as opposed to applying a standardised tolerance). I accept that Chesil Beach and the Fleet Lagoon to the south and south west, in the direction of prevailing wind, will likely have some effect on moderating wave heights and swell here. Nevertheless the FRA and FRTN are premised on theoretical calculations for a site separated from the Fleet Lagoon at the very tip of Weymouth on reclaimed land. They assume that wave action and extreme weather will result in waves exceeding still forecast levels by only about 0.29m (less than the height of a sheet of A4 paper). That potentially over-simplifies the variance inherent in extreme weather events.³⁹
39. If undertaken, wave modelling might of course confirm the methodology and parameters in the FRA and FRTN. Nevertheless the evidence is not there for me to make that judgement, and the onus falls principally on an appellant to substantiate their case.⁴⁰ However even if the methodology and parameters are spot on, flood depths at the site access and for a significant section of Ferryman's Way are likely to represent a 'danger for all'. The Civil

³⁸ PPG Reference ID: 7-079-20220825.

³⁹ I note that the Environment Agency's climate changes allowances guidance referenced above sets out that the allowances should be applied if they are 'not included in your coastal model'. I understand there is no coastal model here specifically, albeit development within the wider area has been subject to modelling.

⁴⁰ Section 62(3) of the 1990 Act.

Contingencies Act 2004 does not abrogate the importance, as articulated in NPPF paragraphs 159 and 161, of directing development away from areas at highest risk of flooding, so as to avoid, where possible, flood risk to people and property. Flood warnings are fallible, and there is no mechanism before me to secure an alternative safe means of exiting the site. Whilst the possibility of an escape route to higher ground is mooted in the information before me, both to the north and east that would rely on crossing third party land.⁴¹ The Environment Agency tentatively suggested that various conditions might address the foregoing implications. However there is firstly inadequate information upon which to design any such conditions. Secondly there is no substantive information on the other potential implications of those measures (for example to ecological designations or to the WHS).

40. If the exception test were to apply, inherent in my reasoning above, is that it would have been failed. In any event access and escape routes have neither been demonstrated to be available nor safe, in conflict with NPPF paragraph 167. That reasoning is, however, tangential. The proposal would fail to direct development away from areas at highest risk of flooding, the common objective of both Local Plan policy ENV5 and NPPF paragraph 159.

Other matters

41. The main parties agreed that, at outline stage, the central judgement is whether an appropriately-designed scheme could come forward. That is distinct from whether that scheme is currently illustrated, albeit that the confines of the site and the nature of the development proposed will inevitably place certain limitations on what is practically achievable.⁴² In this instance that judgement concerns matters of character and appearance, the living conditions of neighbouring residents and also site access (notwithstanding that the latter is not a reserved matter).⁴³
42. The evidence before me is, however, bedevilled by a lack of clarity as to the number of dwellings proposed. The application form describes the proposal simply as for 'the construction of residential apartments...', whilst later specifying 25 dwellings are intended. Rationally the Council's decision notice refers to 25 dwellings. However the illustrative plans show only 20.⁴⁴ The appellant's Heritage, Landscape and Visual Impact Assessment ('HLVIA'),⁴⁵ is consistent with those plans. The FVA is also based on a 20 unit scheme, albeit that the FVAR has undertaken a sensitivity analysis based on a 25 unit scheme. Not insignificantly that sensitivity analysis suggests a greater return on GDV. The hearing provided little clarity on the foregoing.

Character and appearance

43. The floorspaces, illustrated on the plans in terms of gross internal area appear relatively generous compared to the Nationally Described Space Standards (27

⁴¹ There being no vehicular access to the west, where flooding of 4.05mAOD would even submerge the bank around the site by some 0.49m of water based on the figure of 3.56mAOD cited above.

⁴² With reference to the judgements in *Crystal Property (London) Ltd. v Secretary of State for Communities and Local Government & Anor* [2016] EWCA Civ. 1265, and *R v Newbury District Council ex parte Chieveley Parish Council* [1998] JPL 1137, referenced in my hearing agenda and reviewed by the main parties.

⁴³ Effectively the second, fourth and fifth reasons for refusal in the Council's decision notice.

⁴⁴ Plans 19 137 PA03, 19 137 PA04 and 19 137 PA05 showing 8 flats at ground floor level, 8 at first floor level, and 4 at second floor.

⁴⁵ Avalon Planning & Heritage, January 2022.

March 2015, 'NDSS') referenced in Local Plan policy ENV12 (ranging from 62.87sqm in respect of flat 2.4 to 92.5sqm in respect of flat 1.4). There may therefore be some 'overprovision' in terms of floorspace relative to minimum requirements, such that potentially 25 dwellings could be accommodated within the overall parameters of the plans, HLVIA and Community Infrastructure Levy ('CIL') floorspace liability. However that is supposition. Smaller units potentially need more circulation space, and there is no information as to the number of persons each unit is intended to accommodate (in order to verify the ostensible position in terms of NDSS provision). Moreover, as above, the body of evidence before me relates to a scheme for 20 dwellings.

44. 20 dwellings across a site of 0.26ha amounts to around 77 dwellings per hectare ('dph'). That, or indeed 25 dwellings which would represent about 96dph, would be less than the density permitted in respect of the former Ferrybridge Inn site. That scheme proposed up to 29 dwellings across a site of 0.28ha. At its maximum, that amounts to about 104dph. At the hearing Passage Close was described as comprising 35 dwellings across a site of about 0.54ha. That is about 65dph.⁴⁶ 77dph would therefore appear a reasonable blend between the Ferrybridge Inn scheme and that at Passage Close, noting that NPPF paragraph 124 supports making efficient use of land.⁴⁷ My view in that respect is reinforced by the entry in the SHLAA, whereby a potential housing density of 75dph is referenced (albeit for land to the west also).⁴⁸
45. That level of density would not inherently appear uncharacteristic, and there appears to be no impediment to providing sufficient parking on site.⁴⁹ That is notwithstanding that the footprint of the building illustratively proposed appears to transgress Wessex Water infrastructure, whereas a 3 metre operational easement is sought. There is furthermore no clear prevailing aesthetic to properties in the surroundings, those at Passage Close being relatively understated and modern in design (as with accommodation at the Chesil Beach Holiday Park). Subject to a sensitive approach to reserved matters, an appropriately designed scheme for 20 dwellings could in my view come forward (including with reference to the WHS and prevailing landscape or coastal character).

Living conditions

46. Whilst there is generally no right to a given view, enclosure and natural light are legitimate planning considerations. Based on the illustrative plans I accept that the proposal would result in substantial built development next to the south-westernmost properties at Passage Close (albeit that there would be a relatively generous separation distance between the nearest elevation of the Warden's House). Given that inter-relationship and orientation there would likely be some effect on the outlook and natural light from which the occupants of Passage Close currently benefit (and also potentially other implications including in respect of privacy).

⁴⁶ $(1/0.54) \times 35$.

⁴⁷ A mathematical blend between the two being 91dph $(1/(0.26+0.28) \times (20+29))$.

⁴⁸ Site reference LA/WEYM/042.

⁴⁹ Albeit that the Dorset Residential Car Parking Provision Guidance of May 2011 does not appear to set recommendations for the typology of dwellings illustratively proposed.

47. However properties with west-facing windows at Passage Close appear to be dual aspect, with a view also squarely towards the Lagoon. The latter would be unaffected. Plan 19 137 PA08 moreover shows a reasonable degree of separation between the illustrative building proposed and properties at Passage Close (broadly comparable to the inter-relationship between dwellings that prevails, including in respect of building heights). As such, and to some extent flowing from my reasoning in respect of residential density, there is nothing inherently to indicate that a sensitive approach to reserved matters could not moderate effects to the living conditions of neighbours to an acceptable level (in accordance with Local Plan policy ENV16 and NPPF paragraph 130. f)).

Access

48. Setting aside vulnerability to flooding, there is no dispute that Ferryman's Way is very lightly trafficked on account of it leading only to the Cafe to the west beyond the appeal site. Its coastal character, and being only partially consolidated, will mean that drivers naturally proceed cautiously (in all likelihood driving well below the 30mph limit). Up to site access from the A354 Ferryman's Way is two-way, albeit narrowing thereafter heading westwards. As referenced in the appellant's Transport Statement ('TS'),⁵⁰ and Transport Technical Note ('TTN'),⁵¹ the site is reasonably accessible via modes other than private vehicles, there are no recorded recent accidents in the vicinity, and there appears to be nothing in terms of street or access geometry that might prevent a safe and suitable access from being created.

49. However details of access, despite not being reserved, are limited. There are, for example, no visibility splays shown on plan 19 137 PA07. The TTN also refers to it being envisaged that the site access arrangements 'will take the form of a priority T-junction off Ferryman's Way'. That suggests some ambiguity rather than a definitive arrangement. Furthermore the appeal site, shown red-edged on the supporting plans, does not extend to the boundary of the adopted highway a short distance to the east.⁵² Nevertheless given the foregoing reasoning, and also the extent of Ilchester Estates' landholdings extending up to the adopted highway, there is again nothing to intrinsically suggest that appropriate access for the use proposed could not be achieved subject to a suitably-worded condition.

Conclusion

50. I have reasoned above that the proposal could be acceptable in respect of character and appearance, living conditions and access. Were that the case, however, and were the proposal acceptable in all other respects aside from the main issues,⁵³ that would be largely neutral in my overall assessment (rather than carrying significant weight in favour of allowing the appeal). As acknowledged above there would be environmental, economic and social benefits were the scheme to be effected in time, notwithstanding that on the appellant's own evidence viability is marginal at best. However, for the foregoing reasons, they may fairly be described as limited. That is relative to

⁵⁰ Cole Easdon Consultants Limited, ref. 7369, February 2022.

⁵¹ Cole Easdon Consultants Limited, ref. 7369/02, March 2023.

⁵² Running approximately between the posts shown next to Ferryman's Way on the location plan at 1.94mAOD and 2.18mAOD and a solid black line across the highway on plan 19 137 PA07.

⁵³ Including environmentally, with reference to the Conservation of Habitats and Species Regulations 2017 as amended, and in terms of archaeological and geological interest.

the significant harm that would result by virtue of the loss of employment land, and in respect of vulnerability to flooding. No other matters are therefore sufficient to justify allowing the appeal in the light of conflict with the development plan. Having taken account of the development plan as a whole, along with all other relevant material considerations, I therefore conclude that the appeal should be dismissed.

Tom Bristow

INSPECTOR

SCHEDULE OF APPEARANCES

For the appellant:

Oliver Adderley, Rural Estate Manager, Ilchester Estates
Jonathan Finch, Associate Director, Avalon Planning & Heritage
Murray Ross, Planning Director, Avalon Planning & Heritage
Rob Bowley, Director, Cole Easdon Consultants Limited
Jess Pockett, Principal Engineer, Cole Easdon Consultants Limited

For the Council:

James Lytton-Trevers, Lead Project Officer, Dorset Council

Interested parties:

Councillor David Northam, Weymouth Town Council
Matthew Pearce, Planning Specialist, Environment Agency
Jayne Purser, Flood and Coastal Risk Management Officer, Wessex Partnerships and Strategic Overview, Environment Agency