



Appeal Decision

Site visit made on 3 January 2024

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/A1720/W/22/3310346

Turret House, Hospital Lane, Portchester, Hampshire 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 A Lawrence against the decision of Fareham Borough Council.
 - The application Ref P/22/0338/FP, dated 4 March 2022, was refused by notice dated 8 July 2022.
 - The development proposed is a new detached dwelling (self-build).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council refused the planning application under the requirements of policies in the Fareham Borough Core Strategy (2011) and the Local Plan (2015). In April 2023 the Fareham Local Plan (LP) was adopted, and the appellant has provided comment. I am obliged to determine the appeal against the most up-to-date policy and have considered it on this basis.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. I have sought the comments of the main parties concerning the revised national policy and have had regard to those made in reaching my decision.
4. Portchester Castle is a Scheduled Ancient Monument (SAM) and a grade I listed building. I have paid special regard to the national importance of this SAM, and also as required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
5. The original application was made by Mr A Lawrence, with the grounds of appeal statement being submitted in the names of both Mr Lawrence and Ms T Dewey. Mr Lawrence is cited as the appellant within the appeal form and I have dealt with the appeal on that basis.
6. The fifth reason for refusal was based upon the harm to the Solent Special Protection Areas (SPAs) that comprise the Solent and Southampton Water SPA, the Portsmouth Harbour SPA, the Chichester and Langstone Harbours SPA, and the Solent and Dorset Coast SPA, and also the Portsmouth Harbour Ramsar. During the appeal the appellant provided a Unilateral Undertaking (UU) and a

financial contribution to provide avoidance and mitigation measures for these habitat sites. The appeal now turns on the remaining reasons for refusal, albeit I shall return to the matter of the habitat sites later.

Main Issues

7. The main issues in this case are:-

- the effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon the setting of Portchester Castle, and its designation as a listed building and Scheduled Ancient Monument, and also upon the setting of the Portchester Castle Street Conservation Area;
- whether the site is in a suitable location for development; and
- whether the proposal would comply with national and local planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Character and Appearance

8. The appeal site comprises a paddock and former stable block positioned close to Portsmouth Harbour coastline. Set back from the coast path behind the access lane to Turret House, the site is bounded to one side by the walls, gardens and outbuildings of this property. Beyond Turret House to the west is a long, broad swathe of public open space that separates the coastline from the town. To the rear of this house and the appeal site are allotments and Roman Grove Cemetery and its extension area. Trees and shrubs to the eastern site boundary separate the appeal site from another paddock, with further paddocks and gardens extending to Hospital Lane.
9. The appeal site shares the use of Turret House's private access lane. To one side of this house is a former stable block, albeit it now has domestic-style windows and doors. The paddock has not been grazed for some time as the grass is overgrown, and parts of it are being used for miscellaneous storage, including building materials, timber, trailers, kiosks, and a caravan. The former stables and Turret House form part of a concentrated cluster of buildings that are segregated from the town by open land, with the paddock contributing to this separation.
10. Portchester Castle, the church and the Roman Fort are impressive historic buildings. Positioned upon a peninsula that juts out into the harbour, these buildings form an iconic landmark group, and their impressive size and scale is such that they dominate the surrounding area. The castle and fort are legibly defensive, and their large scale, the massive nature of their walls, and the impressive extent of their intact historic fabric, along with their physical separation from the town behind earthworks are all indications of their strategic and functional role, as well as being integral elements of the special interest of these buildings. Their imposing impact is experienced both close by, from within the town, from the coastal fringe, and also from the other side of the Harbour. The fort and castle are distinctive landmarks that draw the eye from long distances away, particularly so in the case of the castle with its tall

tower. These buildings give the area a unique and distinct identity that is part of their significance.

11. The fort, castle, and the church are within the Portchester Castle Conservation Area, and they form the physical and functional focus of the historic core of the town. To either side of Castle Street there are numerous high quality historic buildings, and the long, straight nature of this road often framed by houses and buildings reflects the historic development of the town over time. Its linear route emphasises the functional and social importance of this street and its relationship to the castle, fort and the sea, and these relationships are all part of the significance of the conservation area.
12. In addition to the town, the conservation area includes expansive areas of open space that extend from Castle Street to the shore, reflecting the relationship of the sea to the town. The open land along the coast and around the castle and fort set it apart from the town, and this and the mostly low heights of the housing, both historic and more recent, is such that the castle is the dominant building in the area. Moreover, this green, open setting emphasises the domineering prominence of the castle as it makes it clearly and distinctly visible from long distance views, including from such vantage points as Portsdown Hill. The open setting to the castle and the enhancement to the dominance of this building is a distinct element of the character and appearance of the conservation area, including contributing towards the unique identity of the area. Beyond the conservation area boundary the presence of open land along the coastal fringe maintains the dominating impact of the castle, and this open setting to the conservation area makes an important contribution to enhancing the significance of this designated heritage asset and also to that of the castle.
13. The proposed dwelling would be positioned within the north-west quadrant of the site, utilising the existing access and track. Despite its position and its single storey form, the dwelling would be conspicuously visible within the surrounding area. Although having a flat roof, the large size and wide breadth of the dwelling would harmfully spread development into the open land that characterises this area. Even though positioned to one side of the paddock, the dwelling would project well beyond the compact, clustered grouping of Turret House and its former stables, and this, along with the spread of residential paraphernalia across the site, would harmfully erode the undeveloped, rural character and appearance of the coastal fringe and the important contribution it makes to the setting of the castle.
14. The dwelling would be raised above the existing ground level and as such it would be clearly visible above the high wall along the access track. The contemporary style and large size of the dwelling would harmfully draw the eye, including for users of the coast path as it would be visible above the walls when approaching the site from the east. The use of natural stone, window louvres and a deep roof overhang may provide some mitigation for the reflective nature of the glazing, but the presence of long glass walled balconies as well as numerous broad, full height windows would be highly reflective of sun and day light, and at night any illuminated rooms would be conspicuously intrusive. The level nature of the area is such that the dwelling would also be prominently visible when looking towards the coast from the north, and its intrusive, urbanising impact would be apparent from long distances away including from Castle View Road and Wicor Path.

15. Reliance is placed upon the walls of Turret House and existing landscaping to screen the dwelling, and the appellant's Landscape and Visual Impact Appraisal and Addendum refers to the site being almost entirely screened from view by existing vegetation. That may be the case from certain viewpoints when deciduous species would be in leaf, but in the winter months the site is evident as one of the numerous paddocks and open areas of gardens, allotments and the cemetery that characterise this part of the coastal fringe.
16. Some recent planting has occurred with the intention being to supplement the existing trees and shrubs on the site, including with evergreen species. The Fareham Landscape Assessment (2017) refers to the coastal fringe as a patchwork that includes small scale open grassland, the allotments and cemetery, with belts of trees and woodlands. Supplementary planting would accord with this distinctive character and appearance, albeit no additional planting has been proposed along the northern boundary. Nevertheless, landscaping cannot be relied upon to screen a development for its lifetime, particularly if it is not in control of the appellant. Even if semi-mature specimens were planted it would take many years, if ever, to screen the site. Whilst the appellant may wish to retain the planting and use part of the site for horticulture, it does not follow that future occupiers would, especially so in this instance due to the attractive views that would be available to future occupiers.
17. Apart from Turret House, and a few scattered buildings along one side of Hospital Lane there are very few dwellings in the coastal fringe, and it is this open, undeveloped nature that defines the area and enhances the dominance of the castle. Although not within the conservation area, the appeal site comprises part of the open setting for it that contributes to the prominence of the castle. For the reasons given above the scheme would adversely impact upon the open character and appearance of the coastal fringe, and it follows that it would also erode the setting of the castle and the open context to the historic core of the settlement. Despite the presence of the existing trees and shrubs both within the site and beyond it, the castle tower is visible from within the appeal site. The large size of the dwelling, along with its style and form, would draw the eye, thereby detracting from the dominance of the castle. Whether comprising paddocks or gardens, the open land beyond the former stable block forms part of the setting of the castle and of the conservation area, and this separation enhances the dominance of the former. Whilst the appellant's Heritage Assessment considers the proposal would have no likely significant impact on either the castle or conservation area, residential development and paraphernalia would be extended well beyond the existing cluster of buildings associated with Turret House. The spread of buildings into an open area that contributes to the settings of the castle and conservation area would have a suburbanising impact that would be to the detriment of the dominance of the castle.
18. The Framework requires 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. For the reasons given above, the scheme would harm the setting of the castle and that of the conservation area, and as the castle is a SAM and a grade I listed building that are of the highest significance, these harms have to be given great weight, and weight also has to be given to the harms to the setting of the conservation area. The harms would be less than substantial given the size of the site when compared to that of the settings of these designated heritage assets as a whole. Nevertheless,

they would be of considerable importance and have to be weighed against the public benefits of the proposal.

19. The provision of an additional self-build dwelling would be a modest public benefit, as would measures to be energy efficient, minimise pollution, and improvements to the appearance of the paddock. There would be modest, time limited economic benefits arising from construction works and those arising from the occupiers of the dwelling would also be small, albeit ongoing. Public benefits would also occur from the surfacing of a section of the footpath, and undertaking measures to improve the biodiversity value of the site. However, works to the paddock and the footpath could occur irrespective of the appeal proposal. The development of previously developed land would be a benefit of the scheme, but the provision of a single dwelling would not outweigh the significant harm that arises to the character and appearance of the area and to the settings of the designated heritage assets. Consequently, the modest public benefits that would arise from the scheme would not outweigh the significant harm to the heritage assets.
20. For these reasons the scheme would have an adverse impact upon the character and appearance of the area, and upon the setting of Portchester Castle and that of the conservation area. The suggested conditions would not mitigate these harms, and as these harms would not be outweighed by public benefits, so the scheme would fail to accord with the Framework. Nor would the proposal accord with the requirements of LP Policies DS1, DS3, and D1. These policies seek, amongst other things, that development protects and enhances landscapes, recognises the intrinsic character and beauty of the countryside including the settings of buildings of historic significance, that which responds to its context with regard to local character, and that which maintains the character of the undeveloped coast. In addition, there would also be conflict with LP Policies HE1, HE2 and HE3 which seek amongst other things, to conserve and enhance the historic environment and heritage assets, and that development within the setting of a listed building and of a conservation area responds to the historic character and appearance of the area.

Location

21. There is no disagreement between the main parties that the site is within the countryside. Whilst noting the findings of the previous Inspector (appeal ref: APP/A1720/W/20/3250150), since the adoption of the LP, development within the countryside is considered under the requirements of LP Policy DS1. This policy supports development in the countryside subject to various criteria being met, one of which is that the proposal would be on previously developed land and appropriate for the proposed use. The Council have raised no objection to the site complying with the Framework's definition of previously developed land.
22. Notwithstanding this, even if on previously developed land, LP Policy DS1 also requires that proposals in the countryside need to demonstrate that they protect and enhance landscapes, recognise the intrinsic character and beauty of the countryside, and maintain the character of the undeveloped coast. For the reasons given above the scheme would fail to accord with these requirements. The proposal would neither protect nor enhance the landscape and its intrinsic character and appearance, and would harmfully intrude

residential development into an essentially undeveloped part of the coastal fringe. Although LP Policy HP9 and the Framework support the principle of self-build homes, the former directs such homes to urban areas rather than the countryside, and it is the case that both national and local policy strictly control development in the countryside. Limited information has been provided to demonstrate a requirement for a self-build house in this particular location outside of an urban area. The benefits of such a home in this location would not mitigate the significant and unacceptable harms that would arise.

23. For these reasons, the dwelling would not be in a suitable location for residential development, and the conditions suggested by the parties would not overcome the substantial harm arising from the proposal. The dwelling would therefore be contrary to LP Policy DS1 and to objectives of the Framework.

Flooding

24. The appellant's Sequential and Exceptions Tests (2022) refer to the site being protected by flood defences, thereby deeming the site at a very low to low risk of flooding. Irrespective of this, it is the case that the Environment Agency's flood maps show that much of the site is located within areas that would have a high to medium probability to flood (flood zones 3 and 2 respectively), albeit close to the northern boundary there are small parts of the site that are categorised as zone 1.
25. Both the Framework and the Planning Policy Guidance (the Guidance) make it clear that buildings used for dwelling houses are more vulnerable under the flood risk vulnerability classification. The Framework requires that inappropriate development in areas at risk of flooding should be avoided by directing development away from the areas at highest risk, with the aim being to steer development to the areas with the lowest risk. The Sequential Test seeks to steer new development to areas with the lowest risk of flooding, and if this is not possible then the Exception Test may have to be applied. Although the appellant considers the dwelling would be flood resilient, the Guidance advises that even where development can be made safe throughout its lifetime without increasing flood risk elsewhere, the Sequential Test still needs to be satisfied.
26. The appellant considers the Sequential Test has been met as there are no alternative sites within Fareham Borough. However, the Council have pointed out that much of its area is in flood zone 1. The Guidance provides a definition of what is a reasonably available site, including those in a suitable location for the type of development, and this could include a series of smaller sites and / or part of a larger site, none of which needs to be owned by the appellant. In this instance the search parameters for the Sequential Test have been guided by a requirement for a certain size of site to accommodate both a dwelling and a floristry business. However, little detail of this relationship nor indeed details of the business have been provided to justify such a requirement, including an explanation that justifies why the dwelling and business need to be located together on one site. Given this, I cannot conclude that there are no reasonably available sites within the Council's area that are at a lower risk of flooding and capable of accommodating a single dwelling.
27. The appellant also considers the dwelling would provide an additional home to help meet the Council's housing land supply. Such justification carries little weight as the Guidance makes it clear that the absence of a 5 year housing

land supply is not a relevant consideration for the Sequential Test for individual applications.

28. For these reasons the scheme fails to satisfy the Sequential Test. The Exception Test should only be applied following the application of the Sequential Test where it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding. Having regard to the failure of the scheme to comply with the Sequential Test, there is no need for me to consider the Exception Test.
29. The appellant has drawn my attention to a residential scheme at Windmill Grove, including the comments of the Environment Agency (application ref: P/14/0033/FP). This scheme was for a residential estate and its associated works and was considered some years ago, under different national and local policy. The works also involved the demolition of existing buildings and structures, which is not comparable to the case before me. The differences are such that this case does not determine that I should allow the appeal.
30. The dwelling would be in an area at risk of flooding where it is imperative that the strict tests to protect people and property are observed, and when these tests are not met, development should not be allowed. In this case the Sequential Test has not been met, and this would be contrary to the requirements of the Framework and to those of LP Policy CC2, which seeks amongst other things, that development meets the Sequential and Exception Tests and does not increase flood risk elsewhere.

Other Matters

31. The original application was refused in part due to the absence of measures to mitigate the likely significant effect of the scheme upon the integrity of the Solent SPAs and Ramsar. These sites are protected for their habitats and plants and bird populations including waders and wildfowl, and they are vulnerable from recreational activity and from nutrients from wastewater. The appellant has provided a UU and a financial contribution to provide mitigation.
32. Given the location of the proposed dwelling, future occupiers would be likely to impact upon these habitat sites having a significant effect upon their integrity. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. Had I come to different conclusions on the main issues, it would have been necessary for me to undertake an Appropriate Assessment and further consideration of the likely effectiveness of mitigation measures. In doing so I would have had regard to the provisions of the financial contributions and the UU and whether there would be significant effects arising from the proposal, either alone or in combination with other schemes, as I would have to be certain that the integrity of the protected sites would not be adversely affected. However, as I am dismissing the appeal for other reasons, this assessment has not been necessary.
33. A number of other matters have been raised by local residents, including the creation of a precedent and the increased use of Hospital Lane for business traffic. As regards precedent, each application and appeal must be treated on its individual merits, in accordance with the requirements of the current

development plan and all other material considerations. Of the other concerns raised, following my findings on the main issues, I have no need to consider them further.

34. The appellant has also raised concerns regarding the Council's handling of the application. Such concerns have to be pursued by other means separate from the appeal process and are not for me to consider with regard to the planning considerations of this case.

Planning Balance

35. There is a dispute between the main parties as to whether or not the Council have a five year housing land supply of deliverable homes, with the appellant referring to an under-supply of housing. Even if I were to conclude there to be a shortfall in the housing land supply as suggested by the appellant, the adverse impacts of granting permission for the scheme would significantly and demonstrably outweigh the benefits. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. In this case policies within the Framework that protect areas and assets of particular importance, such as flooding and designated heritage assets, provide clear reasons for refusing the scheme.

Conclusion

36. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR