



Appeal Decision

Inquiry held on 22-23 October 2024 and 26, 27 and 29 November 2024

Site visit made on 21, 22 October and 25 November 2024

by **R Barrett IHBC MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **06/01/2025**

Appeal Ref: APP/P2114/W/24/3346806

Land at and adjoining Fort Victoria Pier, Westhill Lane, Freshwater, Isle of Wight, PO41 0NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Miles Blamire against the decision of the Isle of Wight Council.
 - The application Ref is 22/00634/FUL.
 - The development proposed is described as 'proposed Pier Restoration and Shellfish and Fish Landing and Processing Facility, Oyster Nursery, Flexible/ Mixed Use Open Space; Proposed Five Detached Dwellings and Associated Infrastructure and Amenities (readvertised application)'
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Decision

1. The appeal is dismissed.

Applications for costs

2. The Isle of Wight Council (the Council) made a partial application for costs against the appellant. The R6 party did the same. I deal with these matters in a separate Decision letter.

Preliminary Matters

3. The Inquiry was attended by a Rule 6(6) party (R6) opposing the appeal development. This was Save our Seashore.
4. During the course of the appeal application, the description of development was amended. Those amendments reflect changes to the proposed development as confirmed in the Council's Decision. I have therefore used this in the banner heading above.
5. For unexpected and unavoidable reasons, one of the main party's advocate was unavailable on the last two days of the first week of the Inquiry. The Inquiry time table was adjusted accordingly.
6. On the second day of the Inquiry, the appellant's flood risk witness was unexpectedly unavailable due to illness. The Inquiry dealt with the other witnesses' evidence on this matter, using Inquiry time to best effect. After that the Inquiry was necessarily adjourned.
7. With written agreement from all main parties, plus an agreed itinerary, to ensure I fully appreciated the appeal proposal when viewed from the sea, including from the Lymington to Yarmouth Ferry, I carried out an

unaccompanied site visit on Monday 21 October 2024. I also carried out an unaccompanied site visit on the evening of 22 October 2024. That was to appreciate the locality during the hours of darkness. I was able to appreciate longer distance views during the hours of darkness from the Lymington to Yarmouth ferry on the evening of Monday 25 November 2024.

8. Following the appellant's cross examination of the Council's flood risk witness, it was brought to my attention that some views expressed by Mr Long in an email within his proof appendix 5 had been misrepresented as those of a Council officer. With the agreement of all main parties, the questions on this matter put to the Council flood risk witness, together with his responses, have been disregarded for the purposes of my deliberations.
9. It transpired that the error had occurred as Mr Long's comments were highlighted in red in some versions of his proof appendix 5 and not in others. To rectify this a new version of the email was submitted to the Inquiry clearly indicating appellant and Council comments. I accepted that document as (ID11)¹. The core documents were corrected accordingly.
10. The Island Planning Strategy July 2024 (eStrategy) is under preparation. A statement of common ground set out the main parties' position on the weight to be attached to that document. Although submitted to the Secretary of State for Examination by the Inquiry close, it has not yet been fully subject to the rigors of Examination. Therefore, I accord those policies limited weight in my decision making, a judgement that accords with that of the main parties.
11. The Council refused the appeal application for nine reasons. Some fell away prior to Inquiry opening.
12. The Council's fifth reason for refusal relates to the impact of the appeal proposal's commercial elements on the living conditions of nearby residents. On the basis of the submission of additional information regarding potential noise and odour impacts and hours of operation, the Council confirmed that the imposition of suitable planning conditions would overcome its concerns. Given the suggested planning conditions before me, I have no reason to take an alternative view to the Council on this matter.
13. The Council's last three reasons for refusal relate to the absence of a s106 Agreement to secure financial contributions, in relation to affordable housing, increased recreational disturbance on the Solent Special Protection Area (SPA) and harmful nitrate enrichment impacts on the Southampton and Solent Waters SPA. A draft s106 Agreement addressing these matters was submitted to the Inquiry. A final completed version² was submitted during the Inquiry adjournment. The Council confirmed that its provisions address concerns in relation to the above matters. I make my Decision on that basis.
14. Mr Slater, an interested person, presented evidence on the first day of the Inquiry³. Those included matters relating to pedestrian access through the appeal site and along the beach. Having received the appellant's comments on his representations during the adjournment, Mr Slater wished to respond⁴. Having sought views of the main parties on his proposed submission, Mr Slater

¹ Email from appellant to COUNCIL timed and dated 2.19pm Thursday 14 September 2023 ID11

² IQ19

³ ID9

⁴ ID22

addressed the Inquiry, giving the appellant the opportunity to respond in its planning evidence. In my judgement that ensured fairness to all parties.

15. On the last day of the Inquiry, the appellant sought to address the Inquiry. Again, having canvassed opinion of all main parties on his proposed submission, to ensure fairness to all parties, it was agreed that the matters he wished to raise could be dealt with by the appellant's planning witness. That avoided the submission of late evidence and ensured fairness to all parties.
16. On the 12 December 2024 a new National Planning Policy Framework (NPPF) and accompanying documents were published. I have determined this appeal accordingly. In addition, the views of the main parties were sought on their implications for this appeal. Those have been carefully considered in coming to my conclusions.
17. During the course of this appeal the 2023 Housing Delivery Test results were published. Those have also been taken account of in my Decision.

Main Issues

18. Given the above matters, the remaining main issues in this case are :
 - Whether the appeal proposal would be located in an appropriate location, having regard to the Council's spatial strategy;
 - The effect of the appeal proposal on the special architectural or historic interest of Fort Victoria, a grade II listed building and designated heritage asset, with particular regard to its setting;
 - The effect of the proposed development on the character and appearance of the locality, including its coastline; and
 - Whether the appeal proposal would be located in an appropriate location, having regard to flood risk.

Reasons

Character and appearance

19. The appeal site includes scrub and an area of shingle coastline. It is private land with no formal public access. At present it is unkempt, accommodating some storage buildings and temporary structures. It has a generally open, rural and rugged appearance.
20. To assess the impacts of the proposed development in terms of landscape and visual impacts, the appellant carried out a Landscape and Visual Impact Assessment (LVIA). The methodology used accords with the Guidelines for Landscape and Visual Impact Assessment 3rd Edition, a matter undisputed by other main parties.
21. The LVIA concluded that there would be negligible long term impacts on the wider landscape character, including the wider seascape. Given that buildings positioned along the coastline are a feature of the coastal characteristics of the wider area, and the proposed planting would help to assimilate the proposal into the wider settled landscape, I agree with that conclusion.
22. In terms of visual impacts, it concluded that the visual envelope is contained to the local area. Given the intervening landforms, tree cover, built form, and the

- design of the proposed development, particularly its height, I also agree with that conclusion.
23. Turning to localised impacts, the locality includes Fort Victoria, its car park and its wooded country park and local seascape. It accommodates a range of uses, including those at Fort Victoria, a café, tourist accommodation and houses.
 24. Westhill Lane has a distinctly rural feel, being unlit, narrow and enclosed by trees for part of its length. The built form, including Fort Victoria, is generally low level, some set below the road on the seaward side. Generally, buildings are set back from the road, some behind open or raised frontages, or areas of open space, some of which are green. Those green and open spaces, which include the shingle beach and coastline, coupled with the woodland, together with the low level generally small scale development, contribute to the open, and rural character and appearance of the locality.
 25. Despite the presence of some development described above, due to the woodland and tree cover, the open expanse of sea, the absence of street lights, the low levels of light spill from the buildings and spaces, the locality is particularly dark at night. That is recognised by the designation of Fort Victoria as a Dark Skies Discovery Site.
 26. The appeal site, its generally open, rural and rugged character and appearance, affording wide and open views to the shoreline and sea, and darkness at night, significantly contributes to the character and appearance of the locality that I have identified.
 27. The appeal development would introduce significantly more built form into an area of predominantly open space, where little built form exists at present. That would seriously diminish its spatial openness. For the same reason, and due to the height and layout of the proposed houses, open views of the shingle beach, shoreline and sea beyond would be seriously interrupted. That would impact the appeal site's visual openness.
 28. Further, due to their two storey height, overall size, and layout which seriously impinges on the open views to the beach, shoreline and sea beyond, the proposed houses would create a more urban built up feel, which would significantly diminish the rural qualities of the locality. Due to their position and height, even though set back from the road, they would partially enclose Westhill Lane more than at present, which would further reduce the open, rural feel of the locality.
 29. The identified harm would be exacerbated by the proposed design of the houses. They include steep pitched roofs, upright chimneys and large areas of glazing. Whilst the design intent is to take design references from the seascape and landscape, using dark marine related materials and design elements, those design elements are not seen in the locality. For these reasons the proposed dwellings would stand out, which adds to the harm previously identified.
 30. The proposed houses would be close to the shoreline and that position coupled with their design elements explained above, particularly the large areas of glazing, would render them more prominent than other buildings when viewed from Westhill beach. From there they would stand out and appear incongruous.
 31. Moreover, the proposed houses would diminish the open space around Fort Victoria. They would introduce buildings that would be nearer Fort Victoria,

higher than it and nearer the coastline, eroding the Fort's spacious setting. Their height and forward projection would diminish the coastline pattern of development of landmarks clearly seen on promontories. Those matters would be clearly perceptible in short range views from the sea. I heard from interested parties at Inquiry that both leisure and commercial traffic frequently use this stretch of coastline.

32. In addition, light spill from the proposed glazing on the seaward elevations, coupled with the artificial lighting of the pier would be likely to adversely impact the existing night time dark character and appearance appreciable in the locality.
33. Whilst I acknowledge that the glazed areas would relate in part to bedrooms, possibly with curtains closed at night, there would be no mechanism by which that could be controlled. I have taken account of suggested design techniques to reduce the impact of light, including the addition of louvres and oversailing eaves. I have also had regard to controls on the pier lighting through a suggested planning condition, but it is the impact of the development as a whole that concerns me, not just that of the pier lighting.
34. I accept that planting and landscaping would help the proposed development blend into the locality. I also accept that the appeal development would tidy up the appeal site, provide some linked economic benefits in the locality and that the proposed public access through the appeal site to the beach and boardwalk would help to overcome concerns regarding the loss of open space. However, I am concerned that the semi-private feel of the resultant development, as experienced from both the shoreline and Westhill Lane, could discourage unfamiliar pedestrians from using the public accesses both from the beach and Westhill Lane.
35. I acknowledge that the restored pier would afford open seaward and landward views. However, the pier would be private and access would be likely to be restricted when the pier is closed. In any event, my concerns relate to the impact on spatial as well as visual openness. Thus, these matters do not overcome my concerns.
36. I am mindful that suggested planning conditions could control the pier's hours of operation. I also consider it most likely that the Council would be able to control the use of the restored pier for functions and events, such that no material harm would be a consequence with regard to increased activity.
37. The appeal site is indicated in the Isle of Wight Core Strategy (March 2012) (Core Strategy) proposals map as part of the Fort Victoria Country Park and thereby an open space allocation. That designation extends from Fort Victoria along the shoreline towards Yarmouth for some distance past the appeal site.
38. Even though the Open Space Audit 2010 does not include a justification for this designation, and the Council agreed that it did not fall within the definition of multi-functional green infrastructure, or afford public access, those matters do not alter its clear designation in the adopted Core Strategy.
39. Indeed, the supporting text to policy DM13 clarifies that it sets out an approach to green infrastructure and open space giving examples of the range of open space that fall for consideration under that policy. Not all are green, multi functional space such as Fort Victoria Country Park, nor open to the public.

40. Moreover, the supporting text to policy DM13 sets out that green infrastructure has a particular landscape, biodiversity and or recreational function as a network. Their key functions include creating a sense of place and opportunities for greater appreciation of valuable landscapes and cultural heritage, as is the case here.
41. The appeal development would result in the loss of open space. The compensation advanced would not be a significant enhancement to the nature, quality and type of the existing facility. Neither would it provide an alternative site of equivalent or better quality and type at an equally accessible location, so as to meet the requirements of policy DM13(b).
42. Taking all matters into account, whilst the appeal development would not impact the wider area in terms of visual or landscape character impacts, it would significantly adversely impact the character and appearance of the locality. For that reason, it would fail to accord with Local Plan policies SP5, DM2, DM12 and DM13. Together those policies aim to protect, conserve and/or enhance the Island's natural and historic environments, protect the green infrastructure network, the seascape and support proposals for high quality and inclusive design.

Heritage

43. It is agreed that the only designated heritage asset potentially impacted by the appeal development would be Fort Victoria. It is recognised that the Fort has a strong visual and physical relationship with other fortifications in the area, such as Hurst Castle, Fort Albert and Yarmouth Castle. However, given the separation distance, intervening development and planting, potential impacts on other heritage assets are discounted.
44. Fort Victoria sits to one side and close to the appeal site. It is a grade II former fort. (Listing Description No. 1209376) Built on the site of earlier earthwork fortifications, it is a mid 19th century shore battery built to defend the western entrance to the Solent.
45. Originally the Fort comprised two elements. The first is a low level seaward facing section of batteries meeting at a right angle looking out to sea. That had a defensive role, with a design intent of concealment. It is low level, of brick with cambered brick arches, some now infilled to form visitor facilities.
46. Behind it there was a two storey landward section with a more offensive dominating role reflected in its design. That included casements for guns on the upper level pointing seawards. A pier contemporary with the Fort was built to serve it. That is included within the appeal site.
47. Shortly after being garrisoned the Fort became obsolete and was used as barracks. Later, in association with the pier and land to the east, including the appeal site, it was used as a base for laying landmines, again to defend the western entrance to the Solent. Following the departure of the military in 1962, the rear section was demolished, the pier neglected and partially dismantled and the remaining tramlines and ancillary structures mostly removed. Today the Fort is part of Fort Victoria Country Park which includes 20 hectares of woodland and shore.
48. The Fort's significance derives primarily from its built fabric as a record of a response to the perceived French threat in the nineteenth century. I appreciate

that the demolition of the rear section of the Fort has diminished its significance through the loss of historic fabric. It has also reduced an understanding of the Fort's dual seaward defensive and landward offensive roles. However, that does not diminish the status of the remaining structure as a listed building and designated heritage asset.

49. The Fort derives some significance from its setting, although to a lesser extent than its built fabric. As far as relevant to this appeal, that primarily includes its open aspect to the sea, and the land around it and the locality's dark skies. That includes the appeal site, given its historic connections with the Fort's guarding function.
50. The spaciousness around the Fort gives it some prominence in views from both land and sea and recognises its landward offensive role. That includes landward views from the sea and the beach and on approach to it from Westhill Lane. I appreciate that the landward side historically accommodated some development associated with the Fort's function, and thereby was a 'busy space'. However, evidence before me indicates that development was low level and activity associated with the Fort retained a sense of space around it.
51. For the reasons previously outlined, the proposed development would interrupt some Fort views from its Westhill Lane approach. It would diminish the space to the east of the Fort and thereby erode its spacious setting and prominence in views from both sea and land.
52. In addition, the domestic appearance of the housing would fail to reflect the historic pattern of land use. That would erode an understanding of the historic relationship between the Fort and the pier in defending the Solent as well as appreciation of the Fort's dual offensive and defensive roles. The impacts of artificial light from the proposed development during the hours of darkness, for the reasons previously given would compound the identified harm.
53. I appreciate that housing has been developed nearby since the Fort was listed. However, that is further away and set back from the Fort's seaward position. The proposed planting between the Fort and appeal development would provide some visual separation but would not be sufficient to mitigate the harm identified.
54. I acknowledge that the restoration of the pier would be a heritage benefit in itself and would positively contribute to the significance of the Fort, through an improvement to its setting. It would also support the commercial uses at the Fort and thereby help to sustain it. However, there would still be residual harm. That would be less than substantial, mid way along that spectrum.
55. In accordance with National Planning Policy Framework (NPPF) paragraph 215 that harm should be weighed against the public benefits of the appeal development. I do that and accordingly conclude against development plan policy later in my Decision.

Access to facilities and services

56. The appeal site does not form part of a settlement as defined within Core Strategy policy SP1, nor is it immediately adjacent to one. The proposed development would be outside the settlements defined in policy SP1, located in the wider rural area, where unless a specific local need is identified, development proposals will not be supported.

57. A great number of the Island's tourism facilities are located in rural areas to take advantage of the Island's high quality environment. In line with Core Strategy policy SP4, the maintenance and/or improvement of these facilities is supported. Concern therefore relates to the location of the housing element of the appeal development only.
58. Underpinning Core Strategy policy SP1, is the requirement in accordance with national policy to ensure that development is focused in the most sustainable places. That includes minimising the need for travel by private motorised means, acknowledging opportunities to maximise sustainable transport solutions will vary between urban and rural areas. (NPPF paragraph 110)
59. The appellant suggests that there is a local need for the appeal development. In the context of Core Strategy policy SP1, local need includes identified local requirements for housing, a demonstrable contribution to maintaining local facilities (such as schools, shops and community facilities) and to maintain or enhance the wider viability of local communities.
60. The appellant's evidence seeks to demonstrate that the housing development is necessary to fund the restoration of the pier. However, no substantive evidence confirms the extent of restoration work required. In addition, limited evidence is provided to indicate that the housing element of the appeal could not take place on an alternative site within or immediately adjacent the defined settlement boundaries indicated in Core Strategy policy SP1. No substantive evidence of the cost of developing alternative sites is provided. Based on the appellant's viability evidence, I accept that cross funding is required to enable the pier restoration, but insufficient evidence is provided to indicate that this falls within the definition of a local need.
61. Core Strategy policy SP2 confirms a requirement for 980 dwellings in the Rural Service Centres and the wider rural area. The Housing Market Assessment (HMA) 2007 that underpins the Core Strategy sets out a need in the rural submarket in which the appeal site lies for 'mid market' housing products across the Island with a particular focus on family housing, including high quality aspirational housing targeted at managerial and professional occupations to support the Island's economy. In addition, the 2018 HMA indicates a need for four plus bedroom houses amounting to 20% of the overall requirement.
62. The appeal development would provide five 4 bedroom houses on previously developed land. Although the housing provided may not be suitable for young families, given its proximity to the sea and limited garden boundary structures, it could be suitable for some families. However, even if the housing were to meet a local rather than an Island wide need, there is also a requirement for such housing to be located in sustainable locations.
63. In this regard the appeal development would be located close to some facilities at Fort Victoria but those are not facilities and services that would support daily living. Neither are those at nearby West Cottages or Norton Grange, which are primarily tourist attractions. However, I acknowledge that there are a number of facilities that would provide employment opportunities.
64. Such facilities are available in Yarmouth, but that is not within reasonable walking distance. On my site visit I walked from the appeal site to Yarmouth via the road (Westhill Lane and Halletts Shute), a roughly 25 minute walk, for

some part with no pavements or street lighting. Whilst the shoreline route is likely to be a shorter walk, it is more challenging, along a shingle beach close to the sea, unlit and therefore not a reasonable option for some. Generally, the footpaths and walking environment to daily facilities and services are neither safe nor convenient.

65. Yarmouth would however be within a reasonable cycling distance, although the appellant's suggestion of a two minute cycle ride along the public right of way appears an underestimate. A road journey along Hallets Shute (A3054) would be possible but, given the road conditions and traffic, not particularly inviting.
66. Access to public transport is limited. The Standhard Pontoon water taxi from Yarmouth Harbour would include a walk at either end but could offer an alternative to the private car. The nearest bus stop, although within 800m of the appeal site at Hallets Shute, requires a walk along an unlit road with no pavement for much of its length. An on-demand bus service is available but limited in provision.
67. Whilst I have had regard to appeal decisions⁵ brought to my attention, those appeals are for different developments of different scale and do not replicate the circumstances of this appeal.
68. I am mindful that there are increased opportunities for online shopping and supermarket home deliveries. However, that does not overcome my concerns in this regard.
69. I conclude that the appeal proposal would not be located in an appropriate location, having regard to the Council's spatial strategy. It would not limit the need to travel and would not offer a genuine choice of transport modes. It would be likely that new residents of the houses would be reliant on private motorised forms of transport. In this regard it would fail to accord with Core Strategy policy SP1.

Flood Risk

70. For the purposes of application of the Sequential Test, the proposal includes two types of development; the pier development and the housing. It is an agreed matter that the pier development, is a 'less vulnerable use' as defined in NPPF annex 3 and can only be developed in the current location. When considered in isolation that type of development is not of concern in flood risk terms.
71. The proposed five homes, include a type of development classified as 'more vulnerable' in flood risk terms. The appellant provides a Sequential Test for that element of the appeal development. That confirms that it cannot be proven that there are no reasonably available, lower-risk sites for the housing. On this basis therefore, the Sequential Test is not met.
72. Whilst the Sequential Test was not applied to the appeal development as a whole, there was late agreement between the main parties, that whether the appeal development is assessed in a disaggregated way or as a whole, the Sequential Test would not be met. That is the case whether there is a financial requirement for the housing to cross fund the pier restoration or not.

⁵ APP/P2114/W/17/3179322, APP/P2114/W/16/3156931

73. The appellant suggests that the appeal development would satisfy the Exception Test. This is on the basis that it would provide wider sustainability benefits. Also given the finished floor heights of the residential element, and availability of a means of escape, it would be safe for its lifetime, taking account of the vulnerabilities of its users, without increasing flood risk elsewhere.
74. However, the Exception Test should only be applied if the Sequential Test has been passed as confirmed in NPPF paragraph 172 and PPG.⁶
75. The Environment Agency (EA) did not object to the appeal development and suggested planning conditions to ensure that it is safe for its lifetime. However, the assessment of the Sequential Test is a matter for the Council and the EA response does not indicate that it endorses the appellant's consideration of the Sequential Test.
76. As it does not pass the Sequential Test, the appeal development would not be in an appropriate location with regard to flood risk. It would fail to accord with Core Strategy policy DM14, which aims for development to reduce the overall and local risk of flooding on the Island, requiring development to demonstrably meet the aims and objectives of the Councils' Strategic Flood Risk Assessment, including an allowance for climate change. It would also be at odds with national flood risk policy as set out in NPPF paragraphs 170-182. This weighs heavily against the appeal development.
77. The appellant advanced that even if the Sequential Test is not met, the benefits of the appeal development would outweigh any conflict with local and national flood risk policy. I consider this in my overall planning balance.

Other Matters

78. The appeal site falls within the Solent and Dorset Coast Special Protection Area (SPA). Other European sites fall within the Zone of Influence of the appeal development, including the Solent Maritime Special Area of Conservation (SAC) Marine Components, the Solent Maritime SAC Land Components, which is adjacent the appeal site and the Solent Water and Southampton SPA and Ramsar, which is approximately 680ms to the west of the appeal site, along with local sites and priority habitats.
79. The Council also raised concern regarding impacts on a number of protected species including birds, bats and reptiles such as the common lizard, invertebrates and the common oyster.
80. The appellant submitted a shadow Habitats Regulation Assessment (HRA) and preliminary ecological assessment, supplemented at appeal with updates and additional information. Those indicate that the proposed development has the potential to result in Likely Significant Effects in the absence of mitigation. However, it concludes that with appropriate working practices and mitigation, secured by the submitted s106 Agreement and a suggested planning condition requiring a Construction Management Plan, the appeal development alone or in combination would not adversely impact the integrity of any European site or protected species.

⁶ 032 Reference ID: 7-030-20220825

81. However, the Council has remaining concerns relating to the impact of operation of the pier, in particular the anticipated boating activity on the seagrass, a qualifying feature of the Solent Maritime SAC. Natural England has outstanding concerns regarding the pier restoration work impact on the seagrass.
82. In addition, the Council provided evidence of potential presence of bats around the appeal site. Whilst the methodologies used in those studies falls short of providing scientific certainty, it does raise concern of the possibility of bats using the appeal site for foraging or as a migratory route. Despite the extent and type of vegetation at the appeal site and usual bat movement patterns, applying the precautionary principle, a bat survey should be carried out to discount any potential harm to bats including from the appeal site's lighting.
83. The relevant Regulations^[1] require that if the development is likely to have a significant effect on internationally important features of a European Site or protected species, (either alone or in combination with other plans or projects), it is necessary to conduct an Appropriate Assessment, having regard to the site's Conservation Objectives, and advice from Natural England.
84. In this appeal, I am the Competent Authority. However, my findings on my other main issues are decisive in this case, even as assessed thus far. I therefore have no reason to consider this matter further including carrying out an Appropriate Assessment. It is for this reason that I am not dealing with this matter as a main issue, even though I heard evidence on it at Inquiry.
85. Whilst a completed s106 Agreement is before me, given my findings on the substantive issues in this case, I have no reason to pursue that matter further either.
86. The appellant has concerns regarding pre-application advice it received and the manner in which the appeal application was determined. However, that is a matter to be dealt with firstly between the appellant and the Council.
87. Other concerns were raised by interested parties including that of coastal erosion and the adequacy of the affordable housing contribution. Given my earlier findings, I do not have to grapple with those matters either.
88. In coming to my conclusions on this appeal I have taken account of all aspects of the appeal development, including the oyster restoration nursery, shellfish processing and retail and food supply facilities in addition to the provision of flexible public space. I recognise the appellant's expertise and background to deliver those elements of the appeal scheme and have no reason to question those. I have had regard to the community involvement stated. However, those matters do not outweigh the planning harms that I have identified.
89. Whilst some eStrategy policies lend support to the appeal, including those relating to previously developed land and development outside settlement boundaries, as agreed by the main parties to this appeal those policies attract limited weight in my decision.

^[1] The Conservation of Species and Habitats Regulations 2017

Planning Balance

90. The appeal development would deliver a range of benefits, many of which are set out in appendix A to the SoCG⁷ and section 8 of Mr Long's Proof⁸. I have taken all advanced into account.
91. In terms of social benefits, the appeal development would deliver five homes. That is a small number and does not meet the primary local need. However, given the Council's housing land supply position, that is a particular benefit. It would provide a contribution towards affordable housing. It would deliver a small amount of open space, provide public access through the appeal site to the beach and pier along with the proposed boardwalk.
92. It is suggested that some recreational and leisure benefits would result, through proposed events at the pier and that the pier and open space around would act as a hub for recreational activities. However, I have limited substantive evidence to convince me of those benefits and have regard to the limitations on evening activities and artificial lighting by suggested planning conditions. Additional support for the local public transport provision would be an additional small benefit.
93. The provision of an oyster nursery would provide both environmental and educational benefits. However, there is some evidence that throws doubt on its long term achievability. The provision of signage buoys, although provided as environmental mitigation, I accept would raise public awareness of the Solent's marine ecosystem and conservation.
94. There would be benefits in terms of the restoration of the pier and some improvements to the setting of Fort Victoria, ecological benefits resulting from the establishment of a seagrass habitat, landscaping to integrate the appeal development into the coastal environment which could enrich local habitats and promote biodiversity, limited to the benefit beyond mitigation. It would reuse previously developed land and provide economic benefits through the construction, commercial operations, help sustain local facilities, support the fishing industry and provide jobs, amounting to approximately ten full time equivalents.
95. Taken together, to all of the benefits of the appeal, I accord moderate weight. They represent public benefits as referred to in NPPF paragraph 212, which in the circumstances of this appeal, would not outweigh the considerable importance and weight that I attach to the heritage harm identified. That gives rise to conflict with Core Strategy policies SP5 and DM11, which together, seek to conserve and enhance the special character of the Island's historic and built environment in accordance with national policy.
96. In addition, taken together those benefits would not give rise to the wider public sustainability benefits sufficient to outweigh the harm arising from flood risk. In doing so I have had regard to a previous appeal decision⁹ brought to my attention, and approach the planning balance in a similar manner.
97. Section 38(6) of the Planning and Compulsory Purchase Act 2004, sets out, that if regard is to be had to the development plan for the purpose of any

⁷ CD14.1

⁸ CD15.6

⁹ APP/F0114/W/20/3244862 CD8.30

determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. In this case, I have no reason to determine that regard should not be had to the development plan.

98. I have found harm would result to the character and appearance of the locality, that it would not be located in an appropriate location, having regard to the Council's spatial strategy and that it would fail to reduce the overall and local risk of flooding. I have also found less than substantial harm to Fort Victoria, a grade II listed building through development within its setting.
99. Overall, the appeal development therefore gives rise to significant conflicts with development plan policies as indicated. Balancing them against policies that weigh in favour of the appeal, of which there are many, including those supporting the commercial and tourist elements, I consider that the appeal development conflicts with the development plan when read as a whole. Any ecological harms arising would increase that conflict.
100. I have identified a whole range of benefits that would result from the appeal development. However, those material considerations and others identified are insufficient in this case to outweigh the development plan conflict identified. They indicate that a decision in accordance with the development plan should be made. In these circumstances, the appeal should fail.

Conclusion

101. For the reasons given above the appeal is dismissed.

R Barrett

INSPECTOR

Annex A Appearances

FOR THE APPELLANT:

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| Trevor Ward of Counsel He called: | Instructed by Miles Blamire |
| James Harrison BA(Hons) MA Landscape Architecture CMLI | Landscape and character and appearance |
| George Anelay BA (Hons) PgDip MSt MCIfA Director West Sussex Archaeology Ltd | Heritage |
| Gavin Toogood Eng Tech FIHE MCIHT | Flood Risk |
| Tracey Pullan BSc (Hons) Ecologist E3S Consulting Ltd | Ecology |
| John Owen Director E3S Consulting Ltd | Ecology |
| David Long BA (Hons) P&D MA MRTPI | Planning |

FOR THE COUNCIL:

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| Jack Parker of Counsel He called: | Instructed by the Isle of Wight Council |
| Sarah Wilkinson BA (Hons) PG Dip Planning and Development Manager | Planning, character and appearance |
| Lee Byrne BSc MSc IHBC Planning Officer | Heritage |
| Christopher Mills BSc MSc MRTPI Principal Planning Officer | Flood Risk |
| Carolyn Mary Herbert BSc (Hons) Ecology Officer | Ecology |

FOR SAVE OUR SEASHORE (R6):

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| Martha James BA (Hons) PG Dip MRTPI | Instructed by Save our Sea Shore |
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| David Griffith | Save our Sea Shore |
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OTHER PEOPLE WHO SPOKE OR SUBMITTED WRITTEN STATEMENTS AT THE INQUIRY

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| Francis King | |
| Deb King | |
| Mark Smith | |
| Tina Griffith speaking for Dr Christopher Lawrence | |
| Hamish Fletcher | |
| Michael Slater | |
| Colin Thompson | |
| Mr Emlyn Koster | |
| Michael Rainey BSc (Hons) Dip Arch RIBA Rtd Honorary Treasurer Solent Protection Society | |

Annex B Inquiry Documents

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| ID1 | Appellant appearances |
| ID2 | Appellant opening |
| ID3 | Council opening |
| ID4 | R6 opening |
| ID5 | Mark Smith speaking notes and images of Westhill Lane |
| ID6 | Hamish Fletcher speaking notes |
| ID7 | Michael Rainey speaking notes |
| ID8 | Colin Thompson speaking notes |
| ID9 | Written submission from Mr Slater Secretary of the IOW Ramblers Area Footpath |
| ID10 | Mead Realisations Limited V Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 279 (Admin) |
| ID11 | Council email dated 7 September 2023 highlighting Mr Long's comments in red (corrected) Updated proof of Mr Long plus summary to reflect the same corrections |
| ID12 | CIL Compliance statement V2 |
| ID13 | Suggested planning conditions V2 (24 October 2024) |
| ID14 | Appellant comments on Mr Slater's representation (IQ9) plus associated map MB-WHBP-080 |
| ID15 | Public accessibility map with reference no. MB-WHBP-085 Rev D |
| ID16 | Rebuttal proof of evidence of Carolyn Mary Herbert on ecology matters |
| ID17 | Comments of Marine Management Organisation |
| ID18 | Comments of Natural England 19/11/24 |
| ID19 | Executed s106 Agreement and location plan |
| ID20 | Navigation charts and IOW Council Seaside Pleasure Boat Byelaws submitted by appellant |

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| ID21 | Planning approvals 20/00/779/FUL and 23/011484/FUL |
| ID22 | Mr Slater comments V2 |
| ID23 | Mr Koster comments V2 |
| ID24 | Council costs application |
| ID25 | R6 costs application |
| ID26 | Appellant response to costs applications |
| ID27 | Council closing |
| ID28 | R6 Closing |
| ID29 | Appellant closing |
| ID30 | Council response to appellant comments to its costs application |
| ID31 | R6 response to appellant comments to its costs application |

