

TOWN AND COUNTRY PLANNING ACT (1990)
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND)
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REBUTTAL PROOF (PPF 24)

OF

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EXPERT WITNESS FOR CULTURAL HERITAGE

INQUIRY IN RELATION TO THE APPLICATION FOR AN ENERGY RECOVERY FACILITY

AT PORTLAND PORT

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Figure 1: 1863 pictures showing the creosoting plant

Table 1: a comparison of the assessments of harm and benefit and consolidated list descriptions

1. Introduction

- 1.1 This Rebuttal responds to aspects of the Proofs of the Council's and Rule 6 Parties' built heritage Expert Evidence. Evidence in these Proofs relating to the natural heritage, of both the WHS and the National Landscape (former AoNB) is covered in Jon Mason's Rebuttal on landscape matters.
- 1.2 It will be noted that, among the three heritage-related Proofs, there is a range both of the heritage assets considered as potentially affected by the Appeal Proposals and of the levels of harm/benefit ascribed to them. For clarity, these differences are set out in Table 1 and followed by a set of relevant list descriptions.

2. Dorset County Council's Heritage Witness (Helena Kelly)

The contribution made by setting to significance

- 2.1 The assessment of the contribution made by setting to the significance of the Heritage Assets is set out in Ms Kelly's Proof for each asset, or group of assets, considered (see for example, paras 3.13, 3.16, 3.19, 3.24, 3.28, 3.31 and 3.33). The emphasis is overwhelmingly on intervisibility and the association with other heritage assets, in groups and as a whole.
- 2.2 Despite accepting that the 'assets illustrate the historical development of Portland Harbour' (para 3.1; see also para 4.9), there is no acknowledgment of the fundamental way in which the setting of those assets has been transformed over the years, nor of the role of the current port and its activities as forming a critical element of their setting or, even the fact that their reason for existence is the port.
- 2.3 In my view, this does not fully align with Historic England's guidance on The Setting of Heritage Assets (CD 9.30). In particular, as set out in my Proof (para 6.18), the guidance stresses the need to understand the history of change in order to define the significance of an asset's setting (para 9). In para 26, the HE guidance sets out four considerations to understand the contribution of setting to significance. They include:

- The asset's intangible associations with its surroundings, and patterns of use
- The contribution made by noises, smells, etc. to significance

2.4 The HE Guidance then introduces a Checklist of attributes of a setting that may be appropriate to consider in order to define its contribution to the asset's heritage value and significance. It notes that "it will be generally useful to consider [...] the way these attributes have contributed to the significance of the asset in the past (particularly when first built, constructed or laid out), the implications of change over time, and their contribution in the present".

2.5 Among the Checklist are, for 'The asset's physical surroundings', the 'History and degree of change over time' and, for 'Experience of the asset', its 'surrounding landscape or townscape character'.

2.6 In the assessment of 'The contribution made by setting' of each asset (paras 3.13, 3.16, 3.19, 3.24, 3.28, 3.31 and 3.33), Ms Kelly's Proof does not, in my view, cover adequately either the degree of change or the surrounding landscape character of an active, modern and constantly evolving port in providing both the current context and the backdrop to the assets.

2.7 There is far more to the setting of the heritage assets, all directly owing their existence to the harbour and port and designed to enable the port to flourish, than simply the fact of their intervisibility. This is in fact acknowledged in para 3.19, where it is stated that the views along Castletown "convey an area with a maritime and naval character and are part of the setting of the assets [the Conservation Area and No. 1 Castletown] and make a positive contribution to appreciating their historic value". This is followed up in para 4.15, where "the surroundings in which the [Conservation Area and No. 1 Castletown] are currently experienced includes Portland Port and has a commercial and maritime character that reflects the history of the asset".

- 2.8 If the existence of the modern port is accepted as part of the setting of the heritage assets, as it seems to me it must, then it follows that new, port-related structures and related activities, have the potential to enhance their setting (and the ability to understand them in their historical context) or, at the very least, would not introduce harm simply by reason of appearing within the backdrop of a heritage asset – and form part of the constantly evolving port.
- 2.9 In any event, the ERF, although clearly visible in views of the various assets discussed in the Proof, will – with one minor exception discussed below – not sever any intervisibilities, so the ability to view and understand the historical relationships between the assets individually, as a group or with the Port will remain almost completely unchanged. See para 2.18 below for the specific inter-relationship of the Dockyard Offices and Breakwaters.
- 2.10 The exception is the view from the landward end of the Inner Breakwater up to E Battery and the Verne Citadel, which will be interrupted by the ERF. However, the Verne will be visible to either side of the ERF and will become visible as moves along the Inner Breakwater towards the Fort, while E Battery, designed to have a low a seaward profile as possible, for self-evident reasons, would only ever have been minimally visible in these closer views.

The history of the Appeal Site

- 2.11 Ms Kelly covers the history of the Appeal Site at para 3.10 and in Appendices 4 and 5. While noting that “Historically, several buildings were present” within the site, only the Royal Naval Hospital is mentioned as “established at the Port by the mid-19th century”, with the implication that it was within the Appeal Site from the start.
- 2.12 This is not correct. The earliest building known on the site was as a creosote pressure chamber for the piles being used on the breakwater, along with a complex pattern of railway tracks linking the plant to the breakwater. Presumably dating from the 1840s, and thus contemporary with the Dockyard Offices and the start of the construction of the Inner Breakwater, the plant

(complete with smoking chimney) is shown on a painting of 1863¹, as well as on maps/charts of 1893 and 1886 (see figures 7 and 8 of Appendix WFS-1 to my Proof). Railway lines appear to link the plant with the breakwater.

- 2.14 It is not certain, but it seems likely that the creosoting plant ceased to operate when the Breakwater piling was complete. Following that, from c. 1870, the buildings were used as the Royal Naval Infectious Diseases Hospital, until 1901. Thereafter, the site was probably part of the Torpedo Boat site (1901-1916), before being taken over by HMS Sarepta and its successors (1916-1940, 1945-c1960s), with a wartime interlude of use by HMS Attack and the US Navy. Between 1960 and the mid-1970s, it was used as Married Quarters for Military Police, before its final use as a stone crushing yard. As Ms Kelly demonstrates in Appendix 4 of her Proof, the sheds on the site were demolished between 2005 and 2020.
- 2.15 In summary, for the majority of its time, the Appeal Site has been used for directly marine, Naval and/or port-related activities. A key advantage locating the ERF in this location is the opportunity use the electricity generated to provide energy directly to ships and the port. The provision of electricity power to ships from this location stands in a direct line of succession to the listed Coaling Sheds, so it is therefore entirely appropriate for it to be located in that historic context. In passing, it is worth noting that the ERF also stands in succession to the 1906 electricity substation, also with a tall chimney, which stood towards the western end of the port (see Appendix WFS-1, fig. 36), and the and the long-running fuel oil bunkering activity on the Mere.

¹ Note: Figure 13 of Appendix WFS-1 reproduces an engraving showing a view of Portland, showing the outline of a building and smoking chimney. I had interpreted this as the Creosoting plant but now believe that this actually shows a building further around the coast. Figure 1 of this Rebuttal, the 1863 painting, is a replacement for this image. It is taken from p. 21 of *Dorset: The Royal Navy* by Stuart Morris (2011).

The contribution of the Appeal Site to the setting of, and the impact of, the Appeal Proposals on adjacent heritage assets

- 2.16 Following the limited discussion of the history of the Appeal Site, para 3.13 of the Proof goes on to conclude that the currently vacant state of the Appeal Site ‘makes a positive contribution [to] the heritage value of the Breakwaters’. At para 3.16, the same conclusion is reached in relation to the Dockyard Offices.
- 2.17 This is surely at odds with the documented history of the site, which has – until recently, as per Appendix 4 of Ms Kelly’s Proof – not only had buildings on it, but for the majority of the history of the port, buildings and operations directly connected to the day-to-day operations of the port. In such a context, to have a vacant site in the heart of an operational port cannot in my view contribute positively to the settings of the Dockyard Offices, Breakwaters and associated structures, including the non-designated heritage assets of the railway viaduct and the embedded rails on and around the Appeal Site.
- 2.18 Turning to the Appeal Proposals, para 4.6 (under the heading *Attributes of development affecting setting*) states that “the Development [...] is sited between [the listed Dockyard Offices] and the Breakwater”. This is not correct. It is sited adjacent to them and does not obstruct the important view between them. Until the recent clearance of the site, and ever since the construction of the creosoting plant and its smoking chimney, this view would have been defined on the landward side by buildings, principally associated with the port and its activities, and tucked under the steep slope of the Weare.
- 2.19 Putting a new building – the ERF – back on this vacant site would not “introduce a detracting element in views of the Dockyard Offices” but would reintroduce an industrial, port-related activity into this historically significant area of the port.

Securing the benefits of the Heritage Mitigation Plan

2.20 Section 5 of Ms Kelly's Proof considers the Appellant's Heritage Mitigation Strategy.

2.21 With regard to the proposal to remove E Battery from the Heritage at Risk Register, para 5.3 acknowledges that there would be (an unspecified level of) heritage benefit. However, this benefit is said to be compromised by "some disadvantages to the measures proposed". These include:

- A lack of a conservation management plan and condition survey ('neither of which is proposed') to inform the strategy;
- Lack of information on how the commemorative stone on the Breakwater will be maintained during construction and operation of the development;
- Scrub removal may allow for clearer views of the Development.

2.22 On this basis, the benefit of the Heritage Mitigation Strategy is described as 'minimal' (para 5.4).

2.23 Taking the points above:

2.24 The methodology for the removal of E Battery from the Heritage at Risk Register will be secured by a Planning Condition specifically relating to this work. The condition requires that prior to the ERF becoming operational the Heritage Mitigation Strategy will be approved in writing by the Council. The Heritage Mitigation Strategy is clearly set out in the Condition (Draft Condition #35) and includes a number of requirements including (i) methodology for removal of scrub/vegetation, (ii) specification of repair works, (iii) confirmation of how ongoing maintenance and survey programmes will be delivered and (iv) details of approvals/consents required. The Applicant has previously agreed with the Council that ongoing maintenance will be provided as part of the ERF proposal to ensure the restored status of E Battery post-work is maintained. The Applicant is happy to consider further comments from the Council on this draft Condition if it is believed that this position is not adequately clear. In addition, as Historic

England has pointed out, Schedule Monument Consent will be required for the works, so there is yet another safeguard to ensure that the works are correctly planned and carried out. So this is not a basis for downplaying the benefit of the Heritage Mitigation Strategy in achieving the very high bar and significant heritage benefit of removing E Battery from the Heritage at Risk Register, and keeping it off.

- 2.25 Similarly, measures to protect the commemorative stone are included in the draft Conditions. Draft Condition #8 states that prior to commencement details of temporary protection works to the Inner Breakwater (e.g. commemoratives plaque) and Dockyard Officers shall be approved by the Council, to be retained until the ERF is fully operational. It was not previously considered that there is risk of harm once the ERF is operational but the Applicant is happy to consider amendments to this condition should the Council now disagree.
- 2.26 Finally, as demonstrated by Fig JM8 of Jon Mason's Appeal Appendix JM4, scrub clearance within E Battery will not make the ERF any more visible from within E Battery than it is now, as the small element of stack protruding above the structure will remain hidden by the scrub beyond. This is not, therefore, a reasonable basis to downplay the heritage benefits of the Heritage Mitigation Strategy.
- 2.27 Para 5.5 of the Proof mentions the idea, raised by Historic England, that a local special interest group may be willing and able to repair E Battery. As far as I am aware, there are no proposals before the Inspector with any realistic chance of being able to fund or carry out to the necessary standards the repair and subsequently maintenance of E Battery in any meaningful time frame. In the meantime, the Battery remains in a 'declining' state.

3. The Rule 6 Parties' Heritage Witness (Mrs Nichola Burley)

The contribution made by setting to significance

3.1 In para 4.2.1, Mrs Burley's Proof sets out Historic England's three steps to assess the impact on development proposals on the setting of heritage assets:

- Step 1: Identify which heritage assets and their settings are affected
- Step 2: assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated
- Step 3: Assess the effects of the proposed development [...] on that significance or the on the ability to appreciate it

3.2 Unfortunately, Step 2 is nowhere carried out in the Proof. This means that there is no sound, defensible basis for the assessments of harm that are reached, using highly emotive language, in Section 6 of the Proof.

The History of the Appeal Site

3.3 As with the Council's Witness, Mrs Burley's Proof appears unfamiliar with the history of the Appeal Site and of the long history of port-related structures that have stood on it.

Securing the benefits of the Heritage Mitigation Plan

3.4 The Proof in a number of places assumes that the Port is the Appellant (see for example para 7.1). This is incorrect: the Appellant is Powerfuel Portland.

3.5 This incorrect conflation of Port and Appellant is relevant to the Witness' consideration of the benefits of the Heritage Mitigation Strategy as it is argued that, since the Appellant is the owner of the site, they are also responsible for its state of neglect (para

7.4.2). So the removal of E Battery from the Heritage at Risk Register is simply something that they should be doing anyway. This assertion is not correct.

3.6 The Proof also argues, as the Council's witness does, that the Heritage Mitigation Strategy "contains no detailed conservation strategy or commitment to the provision of a conservation strategy or even any emergency repairs" (para 7.2.2). As set out above, all this will be secured through s106 and a Grampian-style Condition, as well as a requirement to obtain Scheduled Monument Consent to make sure that the high bar of removing the Battery from the Heritage at Risk Register is secured and maintained.

3.7 As such, the Proof's conclusion (para 7.5) that "what the Appellant describes as mitigation would not provide any direct heritage benefit [and] could harm a Scheduled Monument/listed building" is simply incorrect. The reality is that the removal of E Battery from the Heritage at Risk Register would be a major heritage benefit, to be weighed in the balance with the level of harm to reach a view on the overall impact of the Appeal Scheme on the heritage assets.

3.8 On the proposed security fence, its height is incorrectly given as 2.5m (paras 7.3.3, 7.4.4), despite the clear annotation of the Proof's figure 50 which states 2m max. It should be noted too that the prevailing scrub vegetation which lines the proposed path will itself hinder most views, irrespective of the claimed 'dense' nature of the fence.

The assessment of harm to non-designated heritage assets

3.9 The Proof includes an assessment of the level of harm to a variety of non-designated heritage assets on Portland, most particularly a number related to the historic stone-working sites along the east coast of the Isle. The harm is assessed as a "moderate level

of less than substantial harm”. This is not normal practice in line with the para 203 of NPPF, which deals with the assessment of non-designated Heritage Assets. It states that, rather than the ‘substantial’/less than substantial test of paras 201-202, it is necessary to reach a “balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset”.

Impact on views from the Jail House Café garden

3.10 At para 6.1.5, in relation to the view from the Jail House Café garden (Figure 33) it is stated that “The view to the massive coaling shed, listed grade II, from the Verne, shown in figure 33, will be blocked by the bulk of the ERF plant”. This is not correct. The view, not just of the Coaling sheds but also the Dockyard Offices will not be blocked, as they stand to the left of the stack from the publicly accessible locations atop the Verne, as shown in Figure JM10 of Appeal Annex JM4. This image also shows how the Breakwaters will still be clearly visible, stretching into the harbour. In addition, the repaired and revealed E Battery will be clearly visible in the foreground of the view without the need for any raised platform (as per para 7.2.3). The appreciation of the group value of this group of assets (Verne, E Battery and Port) is enhanced by the revealing of E Battery.

4. Conclusion

4.1 In summary, both witnesses:

- Fail adequately or reasonably to assess the impact of change in their assessment of the contribution of setting, and the reasons for their existence, to the significance of the very important group of heritage assets under consideration;

- Do not appreciate or acknowledge the long history of the Appeal Site's uses linked, for the majority of its time, to the maritime, naval and port-related operations;
- Find unsupported reasons to cast doubt on the heritage benefits of removing E Battery from the Heritage at Risk Register and of providing enhanced access, through the new permissive path and information boards, to the wider East Weare complex of heritage assets;
- On these grounds fail to carry out the correct assessment of the level of heritage harm versus heritage benefit, in line with paras 202 and 203 of the NPPF.



A momentous occasion in Dorset's maritime history: On 25 July 1849 HRH Prince Albert deposited the ceremonial stone to mark the start of the formation of the Portland Breakwaters. They were designed to enclose a strategic harbour of refuge, and as a foil to the great French harbour at Cherbourg. This was one of Victorian Britain's most ambitious, innovative and expensive civil engineering projects. This 1863 picture shows the Great Coaling Shed, centre right, one of the first facilities to be built. On the extreme right, smoke rises from the enormous creosote pressure chamber for impregnating the timber piles.

Fig. 1: 1863 picture showing the creosoting plant, taken from Stuart Morris' Dorset: The Royal Navy (2011)

Heritage Asset	Designation	Summary of Heritage harm/benefit		
		Dorset County Council	Rule 6 parties	Appellant
Dockyard Offices	Grade II	Less than substantial harm at the high end	High level of less than substantial harm	Very minor impact to setting and from increased traffic, resulting in less than substantial harm to significance
Inner and Outer Breakwaters, including Coaling and Storehouse jetties and Coaling shed	Grade II	Less than substantial harm at the high end	High level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Mulberry Harbour Phoenix Caissons	Grade II	Less than substantial harm at the low end	High level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Embedded rails and railway viaduct	Non-designated			No harm in relation to overall significance
Verne Citadel	SM	Less than substantial harm at the mid-range	High level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Verne Citadel North Entrance	Grade II*	Less than substantial harm at the mid-range	High level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Verne Citadel - railings at approach to N entrance	Grade II			Negligible impact to setting, resulting in less than substantial harm to significance
Various buildings within the Verne Citadel	Grade II			No harm
E Battery	SM	Less than substantial harm at the mid-range, not outweighed by HMP	High level of less than substantial harm, not outweighed by HMP	Overall benefit as very minor impact to setting outweighed by heritage benefit of removal from Heritage at Risk Register. Benefit to group value of East Weare structures.
E Battery	Grade II	Less than substantial harm at the mid-range, not outweighed by HMP	High level of less than substantial harm, not outweighed by HMP	Overall benefit as very minor impact to setting outweighed by heritage benefit of removal from Heritage at Risk Register. Benefit to group value of East Weare structures.
C Battery	Grade II	Less than substantial harm at the mid-range	High level of less than substantial harm	Overall benefit as very minor impact to setting outweighed by heritage benefit of new public views from proposed path. Benefit to group value of East Weare structures.
East Weare Camp	Grade II	Less than substantial harm at the low end		Overall benefit as very minor impact to setting outweighed by heritage benefit of new public views from proposed path. Benefit to group value of East Weare structures.
A Battery, including B Battery	Grade II	Less than substantial harm at the mid-range	High level of less than substantial harm	Overall benefit as very minor impact to setting outweighed by heritage benefit of new public views from proposed path. Benefit to group value of East Weare structures.
Rifle range	SM			Negligible impact to setting, resulting in less than substantial harm to significance, due to distance

1 Castletown	Grade II	Less than substantial harm at the low end	Moderate level of less than substantial harm	Very minor impact to setting and from increased traffic, resulting in less than substantial harm to significance
Royal Breakwater Hotel	Grade II		Moderate level of less than substantial harm	Very minor impact to setting and from increased traffic, resulting in less than substantial harm to significance
Boundary Stone	Grade II			No harm
Portland Castle	SM	Less than substantial harm at the lowest end	Low level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Portland Castle	Grade I	Less than substantial harm at the lowest end	Low level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Captain's House	Grade II*	Less than substantial harm at the lowest end	Low level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Gateway and curtain wall to Portland Castle	Grade II*	Less than substantial harm at the lowest end	Low level of less than substantial harm	Very minor impact to setting, resulting in less than substantial harm to significance
Castletown sub-area of the Underhill Conservation Area	CA	Less than substantial harm at the low end	Moderate level of less than substantial harm (whole CA)	Very minor impact to setting and from increased traffic, resulting in less than substantial harm to significance
Sandsfoot Castle	SM		Moderate level of less than substantial harm	Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Sandsfoot Castle	Grade II*		Moderate level of less than substantial harm	Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Bincleaves Groyne and Northern Breakwater	Grade II			Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Nothe Fort	SM		Moderate level of less than substantial harm	Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Nothe Fort	Grade II*		Moderate level of less than substantial harm	Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Portland House (including that part of the Belle Vue Conservation Area)	Grade II, CA19			Negligible impact to setting, resulting in less than substantial harm to significance, due to distance
Other Conservation Areas on Portland	CA		Low level of less than substantial harm	
Stone-working historic features along the East Coast	Non-designated		Moderate level of less than substantial harm	
General experience of arriving on Portland			High level of less than substantial harm	

Abbreviations: HMP Heritage Mitigation Plan
CA Conservation Area
SM Scheduled Monument

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