

# Small commercial proposal, coastal site

## Planning refusal — assessment and way forward

Prepared for the applicant

ANONYMISED SAMPLE · The location, the authority, all dates, all names and every application and appeal reference have been removed. Structure, reasoning and findings are exactly as delivered.

### Where you are

The authority refused the application under delegated powers on three grounds: the character of the conservation area, development within a designated nature conservation site, and an inadequate flood consequences assessment. An evidence bundle of some 600 documents has since been assembled from the public register, the statutory nature conservation body, the national government, the appeal body and the authority's own committee papers. It reads well for you.

**The short version.** Reason 2 was imposed against the statutory consultee's advice and against a finding recorded twice in the authority's own officer report. Reason 1 rests on a phrase that appears five times in that report and nowhere in the guidance it is attributed to, and has no landscape consultee evidence behind it at all — the tree and landscape officer was consulted and never replied. Reason 3 is real but curable. There is a strong appeal, a partial costs claim worth making, and a revised application the same conservation officer has effectively already told you he would accept.

### Key dates

| WHEN           | WHAT                                           | WHY IT MATTERS                                                                                                     |
|----------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| Week 0         | Application received                           | It sat 58 days before validation. Assume the same delay next time when counting the call-in window.                |
| Week 8         | Application validated                          | Statutory expiry eight weeks on; decision due the week after.                                                      |
| Week 15        | Refused under delegated powers                 | Every clock runs from here.                                                                                        |
| Within 7 days  | Five requests sent (page 6)                    | Cheap, fast, and they set up both tracks.                                                                          |
| Within 8 weeks | Revised application in; member call-in secured | A member must request committee <b>in writing</b> within 21 days of validation.                                    |
| Month 4        | Comparable scheme's own appeal deadline        | The nearby refusal has not been appealed yet. If it is, it runs alongside yours.                                   |
| Month 5        | Appeal and costs claim lodged                  | Six weeks of margin before the deadline.                                                                           |
| Month 6        | <b>Appeal deadline</b>                         | Six months from the decision notice. Not a minor commercial application, so the twelve-week period does not apply. |

| WHEN     | WHAT                      | WHY IT MATTERS                                                                                                                                                                                                                    |
|----------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Month 12 | Resubmission fee position | Country-dependent: a free resubmission within 12 months of refusal still exists in one of the two jurisdictions and was abolished in the other at the end of 2023. Confirm eligibility with the authority before assuming either. |

Prospects on each reason

Reason 2 — nature conservation designation

Very strong

The statutory nature conservation body advised no likely damage to the notified features; the authority’s ecologist did not object; the officer report itself records that no statutory consultee identified any negative impact.

Reason 1 — character of the conservation area

Good, not certain

The guidance the reason cites does not contain its key words; there is no landscape consultee evidence at all; but character remains a matter of planning judgment on which an inspector can side with the officer.

Reason 3 — flood risk

The one to fix, not fight

The weakest ground. The conditional objection was well founded, because the levels underlying the submitted assessment were not professionally surveyed. A topographic survey and a proper assessment remove the reason.

Bars show the relative strength of the grounds against each other, not a probability of success.

Reason 2 — the designation

This is the strongest ground, and the chain below is why.

| STATUTORY NATURE BODY                         | AUTHORITY’S ECOLOGIST        | THE OFFICER REPORT                                                        | THE REFUSAL REASON                                                                           |
|-----------------------------------------------|------------------------------|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| “Not likely to damage the notified features.” | “No objection in principle.” | “No negative impact ... has been identified by any statutory consultees.” | Refused for development within the designation. <b>No feature named. No harm identified.</b> |

The refusal contradicts a finding recorded twice in the authority’s own report.

The officer report names the designated site and states that the application site lies within it. It identifies no notified feature and no harm. Its reasoning is that national policy recommends no development within such a designation which does not assist the site’s conservation goals, and that the proposal is therefore contrary to national guidance. That treats a presumption as a prohibition. The presumption in national planning policy is engaged by damage to notified features, and every consultee who looked said there would be none.

On pathway of effect, the notified interest here is geological — a stratigraphic exposure in the cliffs and foreshore. A trailer-mounted unit standing on existing concrete cannot affect a rock exposure, and no consultee suggested it could. The report also leaves the sentence beginning “and although development in the designation should be avoided” unfinished.

**One thing to close.** The citation listing the notified features and the operations requiring consent is not published in any retrievable form. Request it. The burden of justifying a refusal sits with the authority, so this

does not carry the ground, but it should be on your file. Ask at the same time whether siting a unit on the platform needs the owner's assent under the wildlife legislation. That is a live obligation whatever planning says, and you want the answer before you open, not after.

## Reason 1 — character

The reason is that the proposal introduces a new commercial element to a “quiet and secluded” area, detrimental to the character of the conservation area, contrary to three development plan policies and the conservation area appraisal. Six things on the file bear on it.

| POINT                                                                     | WHAT THE FILE SHOWS                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The key phrase is not in the guidance it is attributed to                 | The phrase appears five times in the officer report. It appears nowhere in the adopted appraisal in relation to this location. The appraisal uses the word once, of the outer residential streets, in a passage that expressly contrasts them with the beach areas and groups the beaches with the town's vibrant commercial core. The phrase originates in the conservation officer's response. |
| The appraisal's key views look away from the site                         | The appraisal identifies eight key views. The two associated with this stretch look in the opposite direction, away from the site. It treats the beach as an essential open area and does not identify this end as a separate character area or give it any distinct character.                                                                                                                  |
| There is no landscape evidence at all                                     | The tree and landscape officer was consulted and did not respond. Neither did the national heritage body or the civic society. The report asserts that two landscape and seascape character assessments apply, then assesses the proposal against neither and quotes from neither.                                                                                                               |
| The authority's own seascape guidance describes the site as actively used | That guidance records that the beaches are very popular for swimming and other activities, that surfing is popular especially towards this end, and that paddleboarding is increasingly evident.                                                                                                                                                                                                 |
| A statutory consultee confirms established commercial use                 | The highway authority: the site “has previously or currently been used for watersports and tourism use”. A consultee, on the file, contradicting the premise that the area lacks commercial enterprise.                                                                                                                                                                                          |
| The officer report concedes almost everything else                        | It accepts that the materials palette is appropriate, that the small scale of the units would be unlikely to detract from the key views, that topography and materials would reduce visual prominence, and that the impact on both nearby listed buildings is negligible. It then concludes that the use may be acceptable in principle but the location cannot be supported.                    |

**The same officer, five months earlier.** Writing on a comparable proposal elsewhere in the same authority, the conservation officer said a small-scale unit of this kind “is not considered alien in such a location” and that the character of the conservation area “is arguably preserved by such a use”. His objection there was to the prominence of that particular siting, and he suggested a position further back. Four days after refusing yours, he gave “no adverse comments” to a temporary unit at a third site despite a listed structure nearby, citing its modest size, visually recessive finish and non-permanent nature.

**What still bites.** Character is a matter of planning judgment, and a conservation officer's view carries weight with an inspector even where the guidance does not use his words. Two units rather than one is more than either comparator scheme. This is a good ground, not a certain one.

## Reason 3 — flood risk

Be clear-eyed about this one. The flood consultee's letter was a *conditional* objection: it had concerns because inadequate information had been provided, asked the authority to seek further information from you, and said that if the information was not provided it would object. That gives the authority a defence on reason 3 that it does not have on reason 2, and an inspector may well find it was entitled to refuse in the face of a live conditional objection.

#### What helps

- **The mapping is more nuanced than the reason suggests.** Against the digitised red line, 26.9% of the site falls in the highest flood zone and 6.8% in the middle zone — and neither published site coordinate falls in any flood zone. The seaward part of the platform is in the zones; the landward part is not. Locating the units on the landward part is a drawing exercise that may dispose of this reason before anyone argues it.
- **The national flood guidance requires proportionality.** It requires an assessment proportionate to the nature and scale of the proposal, gives 75 years as a rule of thumb for non-residential development, and expressly contemplates a shorter expected lifetime where the development has one. The consultee said the lifetime was a matter for the authority to confirm. The authority never confirmed it.
- **The authority dealt with the same issue by condition fourteen months earlier.** On the comparable scheme, the same consultee recommended an assessment and a flood management plan and did not object. Officers required no assessment, reasoning that the unit was mobile, could be moved, was not a highly vulnerable use, and that a condition would suffice.
- **Officers declined to seek the information.** The report records that further information was not requested because it “would not outweigh the previously stated concerns”. It says the same of the green infrastructure statement, which the ecologist had asked to see revised and which could have been secured by condition.

**What was actually objected to.** The submitted assessment gave no ground level or finished floor level, referenced studies produced for a separate development without supplying levels for them, and left the consultee unable to verify whether that data was current. The tide measurements underlying it were taken personally rather than professionally surveyed. The consultee's inability to verify them was therefore reasonable, and the conditional objection was well founded. Treat this reason as something to fix, not something to argue.

**Keep your own tide observations out of the technical case.** A record of observed high water marks across several seasons is genuinely useful for a professional to sanity-check against, and it demonstrates local knowledge — but it belongs in the consultant's briefing or an appendix, not in the statement of case. If figures that were not professionally surveyed go in as evidence and an inspector finds them unreliable, the damage spreads to the grounds that are actually strong.

## Outline grounds of appeal

### # GROUND

- 1 **Reason 2 is unsustainable on the authority's own evidence.** The statutory body advised no likely damage to the notified features; the ecologist raised no objection in principle; the officer report records that no negative impact was identified by any statutory consultee. No feature is named and no harm is identified, so the national policy presumption is not engaged. The report treats that presumption as a prohibition.

## # GROUND

- 2 **Reason 1 rests on a phrase the cited guidance does not contain**, and on guidance that in fact groups this location with the commercial core; it is inconsistent with the authority's own seascape guidance recording active use at this end, and with the highway authority's record of established commercial and tourism use; it rests on no landscape consultee evidence, the landscape officer having failed to respond; it cites two policies without evidence; and it treats the potential for precedent as a freestanding reason for refusal when each application falls to be decided on its own merits.
- 3 **The determination was not made in accordance with the development plan read as a whole**, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. The visitor economy policy is listed in the report but never analysed — its criterion permitting visitor attractions and leisure activities in or adjacent to centres is neither quoted nor applied. The policy designating this settlement for exactly this use is absent altogether. The same authority applied the visitor economy policy explicitly in the comparable committee report three weeks earlier.
- 4 **Reason 3 fails the proportionality requirement** in the national flood guidance, ignores its expected-lifetime approach and the lifetime question the consultee left to the authority, is inconsistent with the authority's own treatment of the comparable scheme by condition, and rests on information the authority declined to request, having neither sought an extension of time nor identified what was actually needed. Capable of being met by condition in any event. Plead this ground on the authority's handling, not on the adequacy of the submitted assessment, which was not professionally surveyed.
- 5 **The approach criticised by an inspector five months earlier** — concerns asserted without substantiating evidence, by this authority, in this conservation area — was repeated here.

**The recent appeal decision is the most useful document in the bundle.** An appeal against this authority, in this conservation area, in the same landscape character area, was allowed five months before your decision. The inspector held that without further evidence substantiating the authority's and objectors' concerns he had to conclude the development would not cause harm; that the authority had not provided substantive evidence of adverse effects sufficient to warrant refusal; and that a scheme just outside the town centre boundary would complement the role of the town centre by contributing a mix of uses in an edge-of-centre location. That last finding matters directly: your site appears to sit just outside the centre boundary, and the visitor economy policy reads "in or adjacent to centres".

## Costs

Worth making, as a substantive claim rather than a procedural one. The costs claim in that recent appeal was dismissed precisely because it was procedural — but the decision recites the test you need, which includes the failure to produce evidence to substantiate the impact of the proposal, or each reason for refusal. Build the claim on reason 2 and let the rest support it.

| PLEAD IT ON                | THE BEHAVIOUR                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Reason 2 (strongest)       | Imposed contrary to the statutory consultee's advice and contrary to a finding recorded twice in the authority's own report, with no notified feature and no harm identified.                                                                                                                                                                                                                                                                                                                                       |
| Reason 3 (supporting only) | Officers expressly declined to seek the information the consultee asked for, and the same authority dealt with the same issue by condition fourteen months earlier. But what was missing was not a document that could have been produced on request — it was a survey that did not exist — so the authority has a real answer. Expect this plank to be knocked out. The green infrastructure point is better: the ecologist asked for a revision, it was plainly condition-able, and officers declined to seek it. |

## PLEAD IT ON

## THE BEHAVIOUR

Reason 1 (supporting)

Attribution of the key phrase to guidance that does not contain it, and a landscape objection with no landscape consultee evidence behind it. Supports the claim; would not carry it alone.

**Three practical points.** The claim must be made in writing when the appeal is made, or by whatever deadline the appeal body sets — not afterwards. You must show the unreasonable behaviour caused unnecessary expense, so keep every invoice for the survey, the assessment and the consultant's work on reasons 2 and 3. And do not let it be pleaded as an attack on the officer's competence; the claims that succeed are the dry ones. Expect a partial award on reasons 2 and 3 rather than on the whole decision.

## Four risks to manage

| RISK                             | WHAT IT IS                                                                                                                                                                                                                                                                                            | WHAT TO DO                                                                                                                                                                                    |
|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Habitats screening               | The site is within a European designated site. Neither the consultee response nor the officer report mentions it, and no screening appears on the file. On appeal the appeal body is the competent authority and must screen under the habitats regulations whether or not anyone raises it.          | Get a short screening note from an ecologist before lodging, so the appeal arrives with the answer rather than acquiring a new problem.                                                       |
| Ownership certificate            | The application form records notice served on the landowner more than four months before the application was received. The procedure order requires notice no more than 21 days before. If that date is right, the certificate is defective.                                                          | Check the date. Serve fresh notice correctly for both the appeal and any revised application.                                                                                                 |
| Open space designation           | The site is within land shaded as open space on the proposals map, and that is a register constraint. The officer never used the policy — but the comparable refusal turned partly on detracting from a defined essential open area, and the appraisal calls this beach exactly that.                 | Expect the policy on a resubmission. Have the answer ready rather than meeting it cold.                                                                                                       |
| An unexplained committee listing | The register records the decision as delegated while also recording a committee date and agenda item. The published agenda for that meeting does not include the application. Under the scheme of delegation, delegating an item back to officers requires the agreement of the chair and vice chair. | Not a defect until explained, but a specific question for the information request: was it listed, who decided to determine it under delegation, and was that agreement obtained and recorded? |

## Two tracks

Both start now. Same consultant, same evidence. You cannot amend the scheme at appeal, which is why track B exists.

### Track A — appeal (the stronger legal case)

| 1. INSTRUCT                                                                                                      | 2. FIX THE EVIDENCE GAPS                                                                                                                              | 3. DRAFT GROUNDS                                                                                       | 4. LODGE                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| A consultant with appeal experience before this authority. Confirm the deadline with the appeal body in writing. | Topographic survey of levels <b>first</b> , then a proportionate flood assessment built on it. Habitats screening note. Correct the ownership notice. | Five grounds. Lead on reason 2. Build reason 1 on the guidance wording and the recent appeal decision. | Appeal and costs claim together, in writing, with six weeks of margin. Third parties may comment within four weeks of the start date. |

#### Track B — revised application (the faster route to opening)

| 1. REFRAME                                                                                                          | 2. SURVEY, SIMPLIFY, RE-SITE                                                                                                                          | 3. PRE-EMPT                                                                                                                                 | 4. SECURE THE CALL-IN                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| “Temporary change of use of land to accommodate a mobile unit”, as at the comparable site — not “siting of a unit”. | Get the levels surveyed. One unit if you can live without the second. Position clear of the highest flood zone, on the landward part of the platform. | Offer all six of the comparable scheme’s conditions unprompted. Two to three years. Submit the flood assessment and screening note with it. | A member must request committee <b>in writing</b> within 21 days of <b>validation</b> . Approach the ward member before you submit. |

**B granted → withdraw A. B refused → A decides it**, and a second refusal reads worse than the first.

## What to request, and in what order

All five within a week.

| WHO                                              | WHAT                                                                                                                                                                                                                                                                                                                               | WHY                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. The ward member</b>                        | The call-in route. Approach before you resubmit.                                                                                                                                                                                                                                                                                   | Your ward councillor is also a member of the authority. The scheme of delegation lets any member request that an application be brought before full committee, in writing, within 21 days of a valid application. That is exactly how the comparable scheme reached committee. Note your last application took 58 days to validate, so the 21 days start later than you would expect. |
| <b>2. The nature body</b>                        | The citation and notified features. Confirm the advice still stands. Ask whether owner’s assent is needed.                                                                                                                                                                                                                         | The citation is not published in retrievable form. If an informal request stalls, an environmental information request forces a response in 20 working days.                                                                                                                                                                                                                          |
| <b>3. The authority</b><br>(information request) | Pre-application advice and the officer’s written response; all correspondence between receipt and validation; the internal record of the decision not to seek the information the consultee requested; the record behind the committee listing; and GIS confirmation of whether the site is inside or outside the centre boundary. | Twenty working days. These are the documents that turn assertions into evidence.                                                                                                                                                                                                                                                                                                      |

| WHO                        | WHAT                                                             | WHY                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>4. The town council</b> | A formal, minuted resolution.                                    | At present your support on file is a deputy clerk's email, and it carries a reference to existing antisocial behaviour and potential vandalism. No published minutes record the resolution, and the council's own agenda index shows no planning meeting in the relevant window. Ask for the record, then ask for a clean resolution supporting both routes. |
| <b>5. The landowner</b>    | Written consent for both routes, and a correct ownership notice. | Before any money is spent.                                                                                                                                                                                                                                                                                                                                   |

## Key references

The delivered assessment lists every instrument, policy and decision relied on, with the relevance of each: the appeal right and the time limits; the ownership notice requirements; the duty to determine in accordance with the development plan; the wildlife and habitats legislation; the conservation area duty; the national planning policy and flood guidance paragraphs cited in the reasons; each development plan policy applied and each one that should have been; the landscape and seascape character assessments; the appeal decision and the two comparable applications; the authority's scheme of delegation; and the costs test. Fourteen entries in the original.

Removed from this sample so the case cannot be identified.

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### Basis and limits

Prepared from the refusal notice and covering letter, the conservation officer's consultation response, the applicant's letter to the case officer, and a research bundle of some 600 documents retrieved from the authority's public register, the national mapping service, the statutory nature and flood consultee, national government, the appeal body and the authority's committee papers. Two findings carry material uncertainty and are flagged where they appear: the position of the site relative to the centre boundary is approximate to about 30 m and needs checking against the authority's GIS, and one comparator rests on a press report rather than the decision notice. The designation overlay is precise to about 5 m against separations of 19 to 40 m, and was cross-checked against two independent datasets. This is a planning assessment to help you brief a professional. It is not legal advice, and the merits of any appeal are ultimately a matter for the inspector.