



Historic England

Mr Robert Allan  
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Our ref: P00666110  
Your ref: Y17/1042/SH  
Telephone 01483 252038  
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26 October 2017

Dear Mr Allan

**T&CP (Development Management Procedure) (England) Order 2015  
& Planning (Listed Buildings & Conservation Areas) Regulations 1990  
PRINCES PARADE PROMENADE, PRINCES PARADE, HYTHE, KENT  
Application No. Y17/1042/SH**

Thank you for your letter of 21 September 2017 regarding the above application for planning permission. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

**Summary**

As signalled in our pre-application advice, we object to the granting of planning permission. The Royal Military Canal is a scheduled monument and its conservation warrants great weight in any planning decision. It is also part of a related group of heritage assets the significance of which would be diminished if the proposed development were to go ahead. We believe that this proposal would cause serious and unjustified harm to the significance of the RMC and its associated monuments, as a consequence of the proposed major change affecting the setting. We do not consider that the heritage benefits claimed in mitigation of this harm are sufficiently closely related to the proposed development for them to be legitimate part of a planning decision. In accordance with the Development Plan policies and the NPPF, we recommend refusal of permission on heritage grounds.

**Historic England Advice**

**Significance**

The Royal Military Canal (RMC) is a unique monument. The RMC is not a normal transport canal but rather was an important part of the country's defences constructed in the early 19<sup>th</sup> century in response to a very real fear of invasion by Napoleon's army – as real as the fear of Hitler's invasion was in 1940. It was built to delay the advance of a landing force while the British army mustered inland. The RMC, together with the chain of Martello towers along the coast, form the best



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preserved monuments to this chapter of the country's history, and since 1986 the entire length of the RMC has been a scheduled monument (NHLE 1003260) in recognition of its national importance.

The eastern end of the RMC was at Seabrook, where the coastal cliffs to the east give way to the easier landing beaches of St Mary's Bay. To prevent an invading force from passing around the terminal, a complex set of defences was constructed, the surviving elements of which form part of the setting of this part of the RMC:

- the Shorncliffe battery and wall (NHLE 1005117)
- the Shorncliffe redoubt (NHLE 1401815) and
- Martello towers No 8, listed grade II (NHLE 1017174) and No 9, both grade II listed and scheduled (NHLE 1017226).

These fortifications were located so as to form a sophisticated integrated defensive system with carefully thought-through fields of fire<sup>1</sup>. The ability to appreciate the connection between related heritage assets has, regrettably, been harmed by more recent changes, but they nevertheless remain highly significant and appreciable as a group.

Amongst the factors that are critical to the ability to appreciate the significance of the RMC at this eastern end is the largely undeveloped nature of the land between the canal and the beach. The construction of the sea wall and coast road has affected the form of the beach, while the former use as a refuse tip has altered the topography in some areas. Even so, with the beach and the canal close to each other, it is easy for people to understand how the RMC would have formed a substantial obstacle to the progress of an invading French army.

### Impact of the proposals

The scheduled area of the RMC will not be directly affected by the development proposals; instead it is the setting of the canal that is affected. Setting is defined by the NPPF as the surroundings in which a heritage asset is experienced. Historic England's *Good Practice Advice Note 3* about setting has been drawn upon by the applicants but we do not agree with all of their conclusions. Our assessment of the level of harm is consistently higher than that assessed by the applicant. We welcome, however, the analysis on page 186 of the D & A Statement of the experience of moving between the sea and the landward side of the canal. We agree with its general conclusion that, although compromised, the open seaward setting of the canal makes a substantial contribution to its understanding and appreciation.

The impact of the proposed development would be to divorce the canal from the shore to a much greater degree than currently. Were the canal to become a linear feature between two substantially developed areas, appreciation of its historic role as a barrier would be undermined and with this the ability to understand its design as a fortification. Our detailed comments on the harm that would be caused are attached as an annex which refers to the viewpoints and photomontages as provided in the application. The conclusion reached in the D & A Statement (page 196) is that, overall, the development will lead to 'limited to moderate harm'. We do not agree with this assessment. Whilst we can accept that harm would be 'less than substantial'

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<sup>1</sup> We note that the depiction of the Shorncliffe battery wall on Fig 7.2 of the D & A statement is incorrect and this should be as shown on the archive plan TNA MP 1/535 (attached).



within the meaning of the NPPF and its associated guidance, we consider that the overall level of harm would be serious. We also do not agree that current lack of public access to some of the heritage assets discounts the effects on their setting.

It is argued by the applicant that the public benefits of the proposal outweigh the harm that would be caused and this includes the heritage benefits of permitting the development. Improved public access to and interpretation of the RMC and its associated heritage assets and improvements in the condition and management of the RMC are put forward as heritage benefits, to be secured through a S.106 agreement or unilateral undertaking. However, they do not flow from the proposed development and could be implemented in the absence of it. In our view they do not therefore meet the test for public benefits in the Planning Practice Guidance (Paragraph: 020 Reference ID: 18a-020-20140306) so they should be discounted in the determination of the application. We also doubt that they are directly enough related to the development to make them valid undertakings under the CIL Regulations 2010.

We therefore advise that your Council should not allow itself to offset some of the harm to the significance of the RMC that would arise from the proposed development by referring to the proposed improved management and interpretation of the Canal.

#### Policy considerations.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 creates a duty to determine planning applications in accordance with the adopted development plan unless material considerations indicate otherwise. Two saved policies from the previous (2006) Local Plan are still applicable to this proposal – LR9 and TM8. We think that LR9 to protect open space for recreation, leisure and amenity purposes continues to be appropriate to the site and its use. TM8 was applied to the site in response to the then Local Plan Inspector determining that significant development (for housing) was inappropriate at Princes Parade. We continue to support the intention of the saved TM8 policy and specifically the part which reads “Proposals should not adversely affect the character and setting of the Scheduled Ancient Monument”. The Inspector’s description of it as “one of the finest vistas in the district” is notable and the 2006 report contains much that is equally applicable to the current proposal. The NPPF (2012) and the Core Strategy (2013) make it appropriate to review TM8 but our view is that the Princes Parade site-specific policy UA18 in the submission draft of the Places and Policies Local Plan is not fully NPPF compliant and on this basis we have objected to it – we think that UA18 as drafted fails to consider setting appropriately. UA18 has not been subject to public scrutiny and as such cannot be afforded weight.

The NPPF – a key material consideration – sets out the Government’s vision that planning should be achieving sustainable development. This is defined as having economic, social and environmental dimensions (para 7) and the role of planning includes protecting and enhancing the historic environment. Para 8 identifies that economic, social and environmental gains should be sought jointly and simultaneously. It is a core planning principle in the NPPF that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations (para 17). The Planning Policy Assessment in the application does not include this in its *Core Land Use Principles* as assessed against the NPPF (D & A Statement page 164) and we think this is a significant omission.



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Section 12 of the NPPF is specific to conserving and enhancing the historic environment. For decision-makers the path begins at paragraph 129, which requires your Council to avoid or minimise conflict between conservation of a heritage asset and any aspect of the proposal. If a proposal cannot be designed to avoid all harm, then the harm should be minimised as part of the design process. Only if you are satisfied that all reasonable measures have been taken in the application to avoid or minimise harm should you proceed to the next step. As the Forge Field case demonstrates, this includes testing the options and assumptions that led to the rejection of less harmful sites.

Paragraph 132 is crucial: *'When considering the impact of proposed development on the significance of a designated heritage asset, **great weight** should be given to the asset's conservation. The more important the asset, the greater the weight should be.'* No other planning consideration is given higher weighting in the NPPF, and scheduled monuments are considered to be 'heritage assets of the highest significance'. The same paragraph confirms that significance can be harmed or lost through alteration or destruction of the heritage asset **or development within its setting**. As heritage assets are irreplaceable any harm or loss should require clear and convincing justification.

The Planning Practice Guidance is also instructive here. 'A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it' (Paragraph: 013 Reference ID: 18a-013-20140306). Thus the contribution made by the setting of a heritage asset in enabling an appreciation of significance is as important as its contribution to significance itself.

We agree that the correct policy to apply next is 134 rather than 133. There are numerous cases that have gone through the courts to establish that this is not a simple weighing exercise. The effect of the requirement to afford great weight to conserving the RMC as a heritage asset of the highest significance is that very substantial public benefits must be demonstrated to be delivered by proposed developments. We have advised above that the claimed heritage benefits should not be part of your Council's considerations.

### Position

Whilst we accept that the re-provision of leisure facilities for the community in Hythe and the surrounding area is important, we do not think that these can only be delivered at Princes Parade, where it would do serious harm to the RMC by affecting its setting at its eastern end. The D & A Statement reviews the different site options available and comes down in favour of Princes Parade. In doing so we do not think that great weight has been afforded to the conservation of the RMC as a designated heritage asset, as is required by the NPPF. The opportunity to locate a leisure centre elsewhere, e.g. at Nickolls Quarry, would avoid the harm to be caused at Princes Parade and we are not convinced that the reasons stated at page 123 of the D & A Statement amount to a clear and convincing justification that Princes Parade should be favoured over other available options.

The inclusion of the residential and commercial elements alongside the leisure centre is described as an essential part of the funding package for this proposal. It has not



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been demonstrated that the quantum of proposed development is the minimum judged necessary to deliver the leisure centre. Since the inclusion of the residential and commercial elements increase the harm to historic significance of the RMC beyond that caused by the leisure centre alone, we think that the necessity of causing this harm must be capable of examination by publication of the viability appraisal that supports the application.

We do not consider that the heritage benefits to the designated assets should be afforded weight in your decision for the reasons given above, but these should in any event only be considered alongside other public benefits once it has been demonstrated that harm is unavoidable or has been minimised. We do not think this is the case. The claimed heritage benefits are not detailed and thus it is impossible to assess what level of improvement to the RMC they could deliver or to be certain that the project is capable of supporting the costs of these.

### **Recommendation**

Historic England objects to the granting of consent for these proposals as they conflict both with the Development Plan and with the advice of the NPPF in that causing serious harm to the significance of a nationally important group of heritage assets, and in particular to the eastern end of the RMC, has not been clearly and convincingly justified. We recommend that the lack of proper justification is sufficient reason in itself to refuse planning permission.

### **Next Steps**

Historic England remains ready to discuss the specifics of this proposal but as our objection relates to the principle of this amount and type of development in this location it will not be overcome by changes to the design of the leisure centre or the illustrative master plan for other elements.

As an application by Shepway DC for land that it owns we would welcome clarification as to whether you would expect any resolution to grant planning permission to be referred to the National Planning Casework Unit for the Secretary of State at DCLG to then consider his position. We are sending a copy of this letter to the NPCU.

We would welcome notice of when this application is likely to go before your Council so that we can consider making representations to members at the committee meeting.

Yours sincerely



Peter Kendall  
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C.C. National Planning Casework Unit

### **Attachments**

Historic England – Concluding Pre-application advice letter 25<sup>th</sup> May 2017.



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Historic England response re Shepway Places and Policies Local Plan Preferred Options – letter of 18<sup>th</sup> November 2016.

TNA drawing ref MP1/535

Detailed comments on the harm to significance based on the LVIA and Heritage Viewpoints



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