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# Appeal Decision

Hearing held on 7 May 2014

Site visit made on 7 May 2014

**by Susan Holland MA DipTP DipPollCon**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 June 2014**

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**Appeal Ref: APP/D0840/A/13/2207797**

**Falmouth Wharf, off North Parade, Falmouth, Cornwall TR11 2TF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by the Fairhaven Shipping Company (UK) Ltd against the decision of Cornwall Council.
  - The application Ref PA12/04275, dated 2 May 2012, was refused by notice dated 26 April 2013.
  - The development proposed is the demolition of existing buildings, replaced with a mixed use development incorporating 44 no. flats, a 14-bed hotel, 20 no. light industrial /workshop units, gallery space and a restaurant/café with ancillary infrastructure and associated landscape works, the wharf area around the buildings to be utilised as public open space, pontoons to be incorporated into the development for berthing of small craft and providing a water taxi stop.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is the effect of the proposed development upon the availability and adequacy of space to serve marine-related industries, in the context of prevailing planning policies for sustainable development and local economies.

## Reasons

3. A previous appeal in respect of a similar proposal was dismissed in July 2008 under Ref. APP/P0810/A/07/2062603, both because *loss of this wharf site with deep water to the mix of uses hereby proposed would be contrary to Policy 8EE of the Local Plan and more recent or emerging policy that aims to sustain and regenerate the local economy* (Decision paragraph 14) and because *the proposal would be unacceptable given the site's high probability of flooding, and would be contrary to Structure Plan Policy 3 which expects development to avoid land at risk of flooding* (Decision paragraph 20).
4. Since that date, changes have been made to the planning policy framework against which the current proposal is to be assessed. Regional Planning Guidance for the South West (RPG10) has been revoked, and the Cornwall Structure Plan has been deleted. Certain relevant policies of the Carrick Local Plan 1998 (the LP) have been saved, including Policy 8EE - Waterside Industrial Sites, and these retain statutory status. (The weight to be attributed to such policies depends upon their consistency with national policy contained in the

National Planning Policy Framework). The emerging Cornwall Local Plan (the CLP), having undergone consultation on the proposed submission document during March-April 2014, is expected to be submitted in early 2015 for Examination. CLP Policies 5 – Jobs and Skills and PP5 – Falmouth and Penryn Community Network Area (CNA) are of particular relevance to the appeal.

5. The Appellant maintains that the appeal proposal, as a scheme for mixed uses including employment, represents sustainable development: the pursuit and achievement of which are the prime concerns of the Framework. The Framework identifies *three dimensions to sustainable development: economic, social and environmental* which give rise to the need for the planning system to perform a number of roles. In relation to the economic role, the system should contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure.
6. The Falmouth Wharf, built out into the Penryn River, provides extensive wharfage on 3 sides. On the east- and north-facing quays there is deep-water access at all states of the tide. On the west-facing quay, deep water is restricted: part of the river-bed drying out and exposed at low tide, and most markedly at low-water springs. The deep-water capacity has attracted to the Falmouth Wharf a number of maritime users whose businesses depend upon such access. In addition to deep-water access, the users require wharfside and workshop space, the capability to use cranes for loading and unloading, the scope to make noise without fear of complaint, and unfettered hours of operation. All these elements are currently available at Falmouth Wharf.
7. Of the current users, Keynvor Morlift (KML) carries out a large range of marine operations including marine/subsea construction and specialist cargo shipment; and operates seagoing/coastal specialist vessels up to 44m in length and 1300 gross tonnes including landing craft, tugs, heavy lift crane barges, survey vessels, Remotely Operated Vehicles (ROV) and crew transfer vessels. The company uses the wharf for repairs to its vessels engaged in work in other coastal and offshore areas, and keeps a workshop and extensive store there. At the time of the Hearing, a floating crane was moored at the wharf for service pending deployment in Orkney, and a landing craft was moored for refit. KML states that it has *a strong and expanding focus on marine renewable energy, predominantly in the wave and tide sector in which the south west UK has built a strong international lead.*
8. The Serco marine service company keeps an office and workshop and 2 ships at the wharf, and requires deep water and unfettered access at all times ('24/7'). The company has public service and defence contracts, and its ships require a security compound, which is effectively provided here by fencing which seals off the eastern wharf. Seaside Services and Falmouth Offshore provide fuel supplies, stores, surveyors, chandlery and other services to ships moored locally or anchored off-shore, and also require 24-hour deep-water access at all states of the tide. The tonnage operated by Seaside has substantially increased since the time of the previous appeal in 2008. Salvage work and other emergency operations have been undertaken from Falmouth Wharf. Ocean Fish have fishing boats which occupy wharf space.

9. All these operators need active working space on the wharf itself: chains, anchors, pallets, machine tools, forklift trucks, generators were all visible in active evidence on site. It is clear that most of the work would not be classified, for planning purposes under the Use Classes Order, as light industrial, B1 use, the definition of which includes that it is *a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, soot, ash, dust or grit*: but as B2 general industry, which is *use for the carrying on of an industrial process other than one falling within class B1....*
10. Work was in full swing on all wharf areas at the time of the site visit: though concentrated into a limited display time-frame, the operational performance was nevertheless highly realistic and undoubtedly representative of normal operations perhaps more usually spread over a longer period. The combined needs of the marine companies for mooring, the space and capacity to undertake marine engineering operations, and for storage and workshop facilities, were amply demonstrated; as, given the evident draught of the vessels present at the wharf, was the need for deep water at all states of the tide. Evidence put by Friends of the Falmouth Wharves showed, unchallenged, that such deepwater access is severely limited all along the coasts of the south-west peninsula.
11. The proposed development would initially, throughout the demolition and construction phase, require the removal of all the existing marine operators, as well as of those many occupiers of business units of other types within the existing buildings. Whilst some would be able in principle to return to the wharf to occupy the proposed new business units, many would not. The wharf would no longer meet their needs and requirements. The length of wharf to be made available to Serco, on the west side, would be inadequate because a large part of the west side dries out at some states of the tide, and because there would be difficulties in providing security. The wharves and other areas would be opened up to public access which would preclude their operational use for fork-lift vehicles, generators, cranes and so on, to the point at which the marine engineering element, and the transfer of stores on a large scale, would be practically impossible. Effectively, most of the existing marine companies would be permanently excluded.
12. Under both statutory current planning policy and emerging policy, marine uses - which form an essential part of the economy of the south west - are to be encouraged and strengthened, not reduced or removed. LP Policy 8EE states that *planning permission will not be granted for development which would result in the loss of existing waterside industrial uses within the areas identified on the Proposals Map* (these include the appeal site). In the supporting text to Policy 8EE, it is stated that in Falmouth *quite apart from the Docks area there is scope for greater use of sites and premises along the southern bank of the Penryn River by firms requiring a waterside location* (¶8.1.10).
13. Whilst LP Policy 8EE contains the proviso (at ¶8.10.3) that *on balance a site's suitability for a non water-related use may outweigh the need to retain the site for water-related industrial use, particularly if there is clearly no realistic prospect of the site being developed/redeveloped for water-related industry in the foreseeable future*, the proviso is inapplicable in the present case. Structural survey evidence shows that the wharf is sufficiently sound to continue in use without wholesale redevelopment. Representations from the

- marine operators contribute evidence that the current marine industrial engineering/service operations run from the wharf are likely to continue to be needed: and that insofar as these concern the offshore renewable energy economic sector, they are likely to expand in the near and foreseeable future.
14. The draft CLP strategic Policy 5 – Jobs and Skills is to *support development proposals where they contribute to any of the following*, including at (2) that proposals would *support growth in the marine sector in ports and harbours ensuring marine related employment, leisure and community sites are protected from alternative uses that do not require water side locations*.
  15. In addition, the Cornwall Maritime Strategy adopted by Cornwall Council in May 2012 constitutes a material consideration supporting the capacity for retention of marine industry at Falmouth Wharf include. The purpose of the Strategy is *to integrate maritime issues into spatial and land use planning [which] will enable better planning and management of the maritime area to achieve 'sustainable development'*. Under *Objective E: to recognise, protect and further develop the 'working harbour' role of Cornwall's estuaries, ports and harbours*, Aim E2 is to *future-proof maritime areas for maritime-related business and community uses through protecting waterfront land in urban environments and ensuring that port infrastructure and waterfront locations are at the heart of regeneration schemes*. Aim E5 includes *facilitat[ing] the expansion of ... economic activities including renewable energy, ...fishing, freight handling, ship repair ....*
  16. Aim C2 is to *support the Local Enterprise Partnership (LEP) and Cornwall Marine Network in promoting and developing sustainable maritime enterprise*; and Aim C3 is to *ensure that Cornwall develops excellence in the provision of marine education and training across the full range of maritime industries and the environment (including higher education and vocational training) building on existing capability and expertise integrated with business incubation*. The Hearing received evidence of the links between wharf operators (such as KML) and the local University and the Marine School, co-operating in training to high levels.
  17. The appeal proposal would use the waterfront wharf areas for public access, incorporating a central plaza with steps potentially doubling as seating, and with the Penryn River as a backdrop. The scheme also includes provision for a water taxi, and potential mooring for boats. However, practical marine use of the wharf areas themselves would be quite restricted. The proposed waterside flats would directly overlook the wharf and the river. Here, residential uses would be incompatible with the marine industries currently operated from the wharf, which commonly use noise-generating processes such as welding and grinding and which need manoeuvring airspace for cranes. All uses to be accommodated in the units towards the rear (interior) of the site would necessarily be of 'business' B1 use class, which precisely excludes the type of marine industry for the most part carried on all along the existing wharf. Access between the units and the wharf would entail restrictions imposed by gates, steps, width, the intervention of parking areas, and distance over which equipment would have to be manoeuvred. There would be no access for articulated vehicles or cranes.
  18. In principle, the appeal proposal would be capable of representing sustainable development in accordance with the provisions of the Framework. However, these provisions apply with at least equal force to the Wharf in its existing

state. Moreover, where existing employment uses, as in this case, incorporate the scope for continuation/innovation/expansion directly relevant to the marine industries promoted by the statutory and emerging development plans, and by the Marine Strategy, their substitution by the uses entailed in the appeal scheme, less directly or non-marine-related, is not favoured in policy terms: rather, the reverse.

19. In these circumstances, the conclusion is that the proposed development would have a materially harmful effect upon the availability and adequacy of space to serve marine-related industries: in conflict with prevailing planning policies for sustainable development and local economies; in conflict with statutory and emerging development plan policies aimed at safeguarding and expanding marine-related industries; and, on balance, in conflict with the national policy of the Framework for sustainable development.

## **Other Matters**

### *Other Existing Uses*

20. Several of the existing large buildings away from the immediate wharveside are divided into business units and other spaces. Some existing uses – such as the artistic studio enterprises – benefit from a waterside atmosphere: though they do not depend directly upon it in the way that the repair of vessels, for example, depends upon the presence of the water. Others, such as the music performance and recording studio, and the thriving furniture workshop, are enabled in this location primarily through the provision of suitably large yet affordable space and have no requirement for or relationship to a marine location.
21. It is not clear whether any of the existing uses would be able to return to the site to occupy the proposed replacement units, which would be of an up-to-date standard not necessarily required by the current uses themselves. In principle, of course, the replacement of the existing units, which are conversions of old buildings, by new purpose-built B1 accommodation would be capable of attracting business uses which could themselves contribute to the local economy in a sustainable way. For this reason, the matter of the existing users other than the marine-industry occupiers is essentially neutral in this case: albeit that the other occupiers experience a strong attachment to the site and would understandably be reluctant to have to vacate their premises.

### *Flooding*

22. In response to the rejection of the previous appeal proposal on grounds of flood risk, the current proposal makes changes to the submitted plans in respect of flood prevention. On the basis that the proposed flats (which are at first-floor level and above) are required as 'enabling development' for the rest of the scheme, the Council considers it reasonable that the various uses should not be 'disaggregated' and considers that the scheme therefore passes the sequential test. The Framework does not impose disaggregation as a requirement. However, the proposal includes vulnerable uses and so the exception test is to be applied. Though the rebuilding of the Wharf is not necessary to the continuance of the existing uses, nevertheless the renewal of the structure in itself could be of some economic benefit. More significant would be the mitigation of flood risk (to the proposed users who would include residential users who do not occupy the site at present). These measures

would manage the flood risk for the life of the development. The Appellant proposes to increase the ground floor levels (by comparison with the initially submitted plans), though not to the level sought by the Environment Agency. The Agency maintains its objection to the scheme. Accordingly, whilst this matter no longer constitutes a main issue, neither does it weigh in favour of the proposal, not having been wholly resolved.

23. There is evidence that the provision of deep-water access (proposed for Serco) to the west side of the wharf could only be maintained through dredging. Only 200m to the east lies the boundary of the Special Area of Conservation in the Penryn River. The application did not include dredging, and so the Council did not consider the matter. Natural England's response to the proposal was explicitly *based upon there being no proposals to undertake any dredging, either during the construction phase or as maintenance dredging post-construction*. It is likely that in the event of a need for dredging, Environmental Impact Assessment (EIA) would be required and that there would be strong objections on nature conservation grounds. Whilst not therefore representing a main issue in the current appeal, on the evidence the matter of dredging, and the potential need for it, nevertheless weighs against the proposal.

### **Overall Conclusion**

24. The proposal could not be made acceptable through the imposition of conditions or through the submitted planning obligation. Therefore, given the conclusion against the proposal on the main issue, together with material considerations none of which weigh in favour of the proposal, the overall conclusion is that the appeal should be dismissed.

*S Holland*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Stephen Birrell	Director, Admore Planning
Ms Alexandra Webster	Director, Admore Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Mr James Holman	Principal Development Officer, Cornwall Council
Mr Stephen Vincent	Business Investment Support Adviser, Cornwall Council

### INTERESTED PERSONS:

Mr Diccon Rogers	Director, Keynvor Morlift
Mr Christopher Totts	for Keynvor Morlift
Capt. Brendan Rowe	Seawide Services
Mr Steve Gregory	Tamlin Shipping
Dr Miles Hoskin	Cornwall Inshore Fisheries Authority
Mr Scott Woyka	of Scott Woyka Furniture, Falmouth Wharf

## DOCUMENTS

- 1 Statement of Common Ground
- 2 Policy Extract from draft Cornwall Local Plan (proposed submission document)
- 3 Draft Planning Obligation by Agreement
- 4 Final Planning Obligation by Agreement