

Isles of Scilly Link – Penzance Harbour Development

Member Briefing on the Penzance Harbour Revision Order and its implications when considering Planning Applications

The proposed scheme

This briefing note relates to the modified 'Option A' proposals that were reported to Cabinet on the 16 September 2009 and the conclusions this note reaches are based on advance scheme information received to date from the Project Team. Planning and Listed Building applications are anticipated to be submitted during the week commencing 12th October.

The scheme under consideration will extend the length of the existing South Pier and reclaim an area of land on the seaward side of the pier to enable the construction of new passenger and freight buildings, a freight yard and new sea defences, including a length of new sea wall. The scheme will also provide a length of rock armour to deflect the sea's impact on the existing harbour wall and significantly reduce overtopping in storm conditions.

A significant part of the scheme lies beyond the current MLW (Mean Low Water) level which would normally place the scheme beyond the legal jurisdiction of the Local Planning Authority (LPA). However, with the Harbour Revision Order now in force as of the 18th September the LPA are now in a position to both entertain and determine planning applications for proposals within the defined area.

Decision Making Processes

The various elements of this scheme are affected by four determining processes:

- Works that **do not constitute development** in accordance with Section 55 of the Town and Country Planning Act 1990
- Works authorised as **permitted development** through the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO), relevant Parts are summarised as follows:
 - Schedule 2 Part 2 – Minor alterations including the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road,
 - Schedule 2, Part 11 – permits development authorised by an order under Section 14 of the Harbours Act 1964 – The Penzance Harbour Revision Order 2009
 - Condition A.1 of part 11 requires that development consisting of the erection, construction, alteration or extension of any building, bridge, adequate, pier or dam, or the formation, laying out or alteration of a means of access to any highway used by vehicular traffic will require the prior approval of the LPA
 - Schedule 2, Part 13 - the carrying out by a local highway authority on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway'
 - Schedule 2, Part 17 - 'development on operational land by statutory undertakers in respect of harbour transport required in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a harbour
- Application(s) for **Planning Permission** under the Town and Country Planning Act 1990 - for works that constitute development under Section 55 of the Act and are not permitted by the GPDO

- Application(s) for **listed building consent** under the provisions of the Planning (Listed Building and Conservation Areas) Act 1990 - for works to the listed structures within the scheme area

The Harbour Revision Order

The Penzance Harbour Revision Order 2009 came “into force” on the 18th September 2009 and affects the area of land defined in figure 1. The order was sought on 15th September 2005 by the then Penwith District Council under section 14 of the Harbours Act 1964 following a separate public consultation and the submission of a supporting Environmental Impact Assessment to the Department for Transport.

Currently the Order is subject to a 6 week period where it is open to challenge to the Secretary of State, however this does not prevent the Local Planning Authority from considering any applications during this time. However if the Order is successfully challenged this may impact on the Council’s ability to continue to progress with any decision making processes and may even revoke any decisions made.

As referred to above the Harbour Revision Order is significant for the following reasons:

1. It will specifically designate the series of described works, see below, that are deemed consent under Part 11 of the General Permitted Development Order 1995 (GPDO).
2. It will effectively establish new operational land upon which other elements of the scheme will benefit from permitted development rights under Part 17 of the GPDO
3. It will extend the jurisdiction of the LPA to cover the land lying within the HRO boundary for as long as the HRO remains in effect or in perpetuity if the works so authorised are completed as detailed under Articles 16 and 17 of the HRO.

Article 4 of the Harbour Revision Order defines 4 specific works and the areas in which they may be implemented as follows (these are identified on figure 2):

Work No. 1

A vertical retaining wall forming a quay face extending into Penzance Bay and enclosing an area of 0.5 hectares of the bed of the sea commencing by a junction with the existing sea wall 16 metres north-east of the Penzance Jubilee Bathing Pool at a point at SW476692298780 and extending in a north-easterly, then northerly direction for a distance of 165 metres and terminating on South Pier at a point at SW477870300098; the enclosed area to constitute a widening on the south side of South Pier and to be used as hard standing for marshalling and parking vehicles and for the construction of a passenger terminal, a freight terminal, public conveniences and a covered walkway.

Work No.2

A rock armoured revetment commencing by a junction with Work No. 1 at a point 19 metres south-west of its termination and extending in a northerly, then north-easterly direction for a distance of 260 metres and terminating in Penzance Bay at a point at SW479474301701, including the provision of a covered passenger walkway.

Work No. 3

An extension of solid construction of Lighthouse Pier, in an easterly then north-easterly direction for a distance of 61 metres using granite facing blocks on the exposed faces on the north side and abutting the rock armoured revetment forming part of Work No. 2 on the south

side commencing on Lighthouse Pier at a point at SW478965301461 and terminating in Penzance Bay at a point at SW479352301772, including the relocation of the existing lighthouse.

Work No. 4

A suspended deck section extending over an area of 80 square metres between South Pier and Lighthouse Pier on the north side commencing on South Pier at a point at SW478027301045 and terminating on Lighthouse Pier at a point at SW477904300990.

Article 6 of the HRO also identifies a number of subsidiary works some of which may also benefit from permitted development rights.

Members are asked to note that the Project Team no longer proposes to progress with Work No. 4 at all and I understand will not be progressing certain elements of the other works which I will cover in the commentary below.

Planning Implications

On the 18th September the Project Team's agents wrote to the Council advising us of their intention to submit a revised planning application. The letter included a revised layout plan and a position statement regarding their interpretation of the implications for the planning process of the Harbour Revision Order coming into force. The Council's Planning Officers together with significant input from the legal team which supports the service have reviewed and where necessary challenged the interpretation and have responded to the Route Partnership accordingly.

In an effort to untangle the complexity of the interrelationship between the different elements of legislation the table below breaks the project down into its component parts and provides a short commentary on the relevant legislation and process.

| WORKS | PROPOSED DEVELOPMENT | APPROVALS | APPROACH |
|---|--|--|---|
| Works No 1 – Reclamation and Terminal Buildings (see figure 3) | | | |
| Retaining wall and reclamation of land | Construction of retaining sea wall to a point level with the reclaimed land and the infilling of the enclosed area to create the reclaimed land | Permitted development under GPDO Part 11. Listed Building Consent required where works impact on listed structure | Applicant to write to LPA stating intent to undertake the works under Part 11 powers. Listed Building application to include forms, certificates, plans, elevations and sections and supporting information. |
| Passenger and Freight Terminal Buildings | Construction of passenger terminal building to include security and ancillary uses, external courtyard/waiting area and freight terminal building to include external storage area, and ancillary uses | Permitted development under GPDO Part 17 | Write to LPA stating intent to undertake the works under Part 17 powers. |
| Sea Wall (above reclaimed level) | Extension of sea wall above reclaimed ground level which is not included in the HRO plans | Full planning application required Listed Building Consent required where works impact upon the listed structure | Full planning application and Listed Building application to include forms, certificates, plans, elevations and sections and supporting information. |

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| Covered passenger walkway | Construction of covered passenger walkway | Full planning application required * | Full planning application to include forms, certificates, plans, elevations and sections and supporting information. |
| Access Arrangements | Demolition of part of Listed Wall to provide new vehicle and pedestrian accesses onto South Pier including new security gates | Access works are GPDO Part 2 in association with Part 17 works Full planning application required for new gates * Listed Building Consent for works affecting listed | Full planning application and Listed Building application to include forms, certificates, plans, elevations and sections and supporting information. |
| Access arrangements | Modification to access for temporary construction access and reinstatement as drop off kerbside area (Advised that physical works will be undertaken by the Local Highway Authority). | Planning permission required as works are not 'maintenance or improvement of the highway' as permitted under GPDO Part 13 | Site notice and local advertisement prior to commencing works. |
| Access Arrangements | Access from adopted highway to new freight terminal area (Advised that physical works will be undertaken by the Local Highway Authority). | Works in the highway are not development GPDO Part 13 and/or Part 2 | Site notice and local advertisement prior to commencing works. |
| Works No 2 – Rock Revetment (see figure 4) | | | |
| Rock revetment | Construction of rock armoured revetment | Permitted development under GPDO Part 11. Listed Building Consent required where works impact on listed structure | Write to LPA stating intent to undertake the works under Part 11 powers Applicant to write to LPA stating intent to undertake the works under Part 11 powers. Listed Building application to include forms, certificates, plans, elevations and sections and supporting information. |
| Covered walkway | The Route Partnership has advised it no longer proposes to construct this length of walkway. | No action required | No action required |
| Works No 3 – Pier Extension (see figure 5) | | | |
| Extension of Lighthouse Pier | Solid extension of Lighthouse Pier | Permitted development under GPDO Part 11 but requires LPA 'prior approval' because it affects a pier. Listed Building Consent required where works impact on listed structure | Requirement for prior approval has been confirmed. The applicant must advertise intent for a period of 3 weeks before formal seeking Prior Approval of Local Planning Authority. See further commentary below. Listed Building application to include forms, certificates, plans, elevations and sections and supporting information. |

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|--------------------------|---|---|---|
| Relocation of Lighthouse | The Route Partnership has advised it no longer proposes to relocate the existing lighthouse structure. | No action required | No action required |
| Other Consents | | | |
| Construction Compound | A decision on the final location of a contractors site office, car park and compound is still to be confirmed though the use of St Anthony's car park is understood to be under consideration | Currently unsure what applications (if any) will be required until a site is proposed | It is understood that the Route Partnership's contractor will separately prepare and submit the necessary application forms |

* opinion is subject to further Counsel advice

Extent of works requiring determination by the Local Planning Authority

Full Planning Application(s)

From the analysis above the only elements that require formal planning consent are as follows:

- That part of the proposed new sea wall above the level of the HRO retaining wall as it is not described in the Harbour Revision Order
- The proposed pedestrian walkway canopy behind the new sea wall as this element is not considered to be authorised through the HRO
- The new gates that will be required on the Listed South Pier and set into new openings within its historic sea as they are again not considered to be authorised by the HRO
- The temporary access into the site as this is not considered to be permitted development under the GPDO

A preliminary review of the proposed new sea wall, pedestrian walkway , canopy, temporary access arrangements and gates, based on the information supplied to date, has resolved that planning applications for these works do not constitute "major development" and would therefore, subject to the findings of a formal EIA screening at the submission stage, only involve an 8 week determination period. Currently no information has been forwarded to confirm the location of the contractor's compound.

Prior Approval

Under the definitions contained in Part 11 Class A of the GPDO - Development under Local or Private Acts or Orders:

Condition

A.1 Development is not permitted by Class A if it consists of or includes—

(a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam, or

(b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic,

unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

As identified in the above table Work No.3 involves the extension of the Lighthouse Pier which consequently will require the “prior approval” of the Local Planning Authority.

However, members are advised that the text of the GPDO goes on to say:

Prior approvals

A.2 The prior approval referred to in paragraph A.1 is not to be refused by the appropriate authority nor are conditions to be imposed unless they are satisfied that—

- (a) the development (other than the provision of or works carried out to a dam) ought to be and could reasonably be carried out elsewhere on the land; or
- (b) the design or external appearance of any building, bridge, aqueduct, pier or dam would injure the amenity of the neighbourhood and is reasonably capable of modification to avoid such injury.

The observation at this point is that with regard to (a) above the works are an extension to the existing structure and to (b) above the HRO describes the use of granite facing blocks on the exposed faces on the north side. It is anticipated that the formal prior approval submission will provide further detail in the spirit of the HRO description.

Listed Building Consent – (See Figure 6)

As is suggested in the table above the permitted development rights granted to the scheme by the Harbour Revision Order do not remove the requirement to secure listed building consent for any works that impact on the existing South Pier as a Grade II listed structure.

It is understood that a request has been made to English Heritage to consider the upgrading of the structure to a higher status either grade 1 or grade 2*. It is further understood that an assessment team from English Heritage are due to visit the site in the near future. However, English Heritage have advised that although a review may be in process any assessment of an application for listed building consent would be based on the graded status of the structure at the time the application is made.

On the basis of the plans supplied to date, the works that will need to be considered as part of the listed building application will include:

- The demolition and making good of three lengths of listed sea wall to provide pedestrian and vehicular access
- The erection of new security gates and fencing
- The connection of the new, pier extension, retaining wall and sea wall to the listed pier
- The demolition of the existing public toilet block
- The creation of new vehicular and pedestrian accesses onto and along the South pier, including elements of new surfacing
- The placing of infill material for the reclaimed land and the proposed rock armouring against the listed sea wall structure

Action post Planning Committee - if the committee are minded to grant any listed building consent then under Regulation 13 (2) of Statutory Instrument 1990 No. 1519 - The Planning (Listed Buildings and Conservation Areas) Regulations 1990, the application and decision will need to be referred to the Secretary of State and English Heritage for final determination. This is because the application is being made by part of the Council's organisation.

Government Office has advised that they will process such referrals within their statutory 56 day deadline.

Need for Conservation Area Consent?

The proposed scheme partially lies within the Penzance Conservation Area and the drawings submitted to date indicate the demolition of a length of unlisted sea wall. However, legal opinion has advised that for the purposes of Circular 01/01 the wall is classified as a "building" and that conservation consent is only required a building will be totally or substantially removed. An examination of the latest drawings submitted, backed up by a site visit by colleagues in conservation has concluded that the amount of demolition proposed in this case is neither total nor substantial and therefore does not require Conservation Area Consent.

Next Steps and Timeframe

It is understood that the Project Team's agents have erected site notices in accordance with the requirements of Circular 15/92 expressing their intent to seek the "Prior Approval" of the Council where it is required for those works under Part 11 of the GPDO – namely the extension to Lighthouse Pier and outlining the intentions to execute works under permitted development rights, namely parts 2, 11,13 and 17 of the GPDO.

It is further understood that the agents are currently preparing planning and listed building applications for submission to the Council either during the week commencing the 12th October or soon after.

We will advise members when the applications have been received and registered.

David Slatter – Major Project Manager, Planning and Regeneration – 2nd October 2009