

16 February 2010

To the members of the Strategic Planning Committee, Cornwall Council

Objection to Application No. 10-0095-LBC for Listed Building Consent in respect of proposed works at Penzance Harbour

Objector: Dr Peter Levin

I object to Application No. 10-0095-LBC for Listed Building Consent in respect of proposed works at Penzance Harbour. I have five grounds of objection:

1. There has been no material change since the previous application that justifies resubmitting it. In particular, the objection from English Heritage still stands.
2. The outcome of the work, should the Application be granted, would be the loss of a hugely important part of the town's heritage and a persisting blight on the area, which would damage the prosperity of the town and hinder its economic regeneration. Carrying out the work would also do lasting damage.
3. The Cabinet's decision that the Application should be resubmitted to your Committee should be resisted because it was based on incomplete and inaccurate information.
4. Although you have been told repeatedly that approving the Application for Listed Building Consent is necessary in order for the sea link between Penzance and St Mary's to continue, this is not correct.
5. Council officers have not followed the Government's planning policy guidance, and you have not been correctly informed about it.

Abbreviations used: DfT = Department for Transport; RP = Route Partnership; EH = English Heritage; CODR = Case Officer's December Report (prepared for the meeting of the Strategic Planning Committee on December 14th, 2009).

1. There has been no material change since the previous application that justifies resubmitting it. In particular, the objection from English Heritage still stands.

1.1 As the Case Officer (Mr Slatter) says in his letter dated 3 February 2010 sent to people who had objected to the previous Application, the new Application is virtually identical to the previous one: it 'proposes identical works to that previously proposed and withdrawn submission (*sic*) in all respects, other than that the new works propose the use of natural stone to the external face of the proposed sea wall'.

1.2 Andrew Vines, South West Regional Director of English Heritage, stated in a letter dated 22 January 2010 to Kevin Lavery: '*[Our] statutory response ... still stands.*' As you know, that statutory response was to oppose the Application for Listed Building Consent.

1.3 The minutes of the Cabinet meeting on January 25th show that the Head of Planning & Regeneration, Phil Mason,

confirmed the Council had assumed ... [that must mean Mr Mason himself had assumed] ... that English Heritage had taken a "balanced decision". It had since been clarified in a recent letter ... that their views had only represented a conservation aspect. He confirmed, in his view, that the Council could submit a fresh application for listed building consent based on the need to formulate a balanced view of issues.

1.4 English Heritage's website makes it very clear that their role is to give advice on heritage issues and not to judge the balance between various interests. In particular, EH say:

We expect to uphold publicly the statutory advice provided by English Heritage to local planning authorities. Unless material circumstances change, we will not alter our advice. *In complex cases it is for the statutory decision-maker(s) to judge the balance of any competing interests.*¹ (My italics)

In this case EH have evidently discerned no material change in circumstances, and so have not altered their advice. The only thing to have changed since your Committee's meeting on December 14th is that planning officers have corrected an erroneous assumption about the role of EH that should never have been made in the first place (discounting, of course, any suggestion that they have been prevailed upon to collude in fabricating an excuse for resubmitting).

1.5 Notwithstanding what the Cabinet has now been told, however, you will recollect the written instructions you were given prior to the meeting in the Case Officer's December Report. You were told:

In deciding this application a balanced judgement must be made with regard to the harm caused to the listed buildings and their setting against the

benefits including regeneration and community benefits for Penzance and the Isles of Scilly. (CODR Summary, second paragraph)

It was very clear from the discussion at the meeting that each of you who spoke did indeed do your best to form a balanced judgment. You took serious account of what you were repeatedly told about this being 'the last piece of the jigsaw' and what you were told about the envisaged 'benefits', and balanced this against the harm that going ahead with Option A would do.

1.6 It makes a mockery of the democratic process which you scrupulously followed for you now to be told that you did *not* make a balanced judgment on that occasion, so you must do it again – with the heavy implication that this time you must come up with the 'right' answer.

1.7 So I ask that you reject the Application, on the ground that you have already taken your decision on it and there has been no material change in circumstances to justify reviewing your decision.

2. The outcome of the work, should the Application be granted, would be the loss of a hugely important part of the town's heritage and a persisting blight on the area, which would damage the prosperity of the town and hinder its economic regeneration. Carrying out the work would also do lasting damage.

2.1 The South Pier as it exists now is not only a hugely important part of the town's heritage but an important landmark, visible from vessels on the sea but also from the coastline all around Mount's Bay and from the air (to passengers on the helicopter flights to the Scillies). It constitutes a physical record of the maritime history of the town. The proposed works will destroy its heritage value and destroy it as a landmark. The rock armouring and the infill will conceal the seaward side of the Pier for ever.

2.2 Implementing the proposal would amount to establishing an industrial estate in the middle of the Penzance seafront. The Halcrow 'Appraisal of Alternatives' report² published in August 2009 says four fork-lift trucks would be required to unload lorries and move freight between sheds and the ship: two trucks with 3 tonnes capacity, one with 5 tonnes capacity, and one monster with 10 tonnes capacity. The plans show that from the warehouse to the shipside loading point is approximately 300 metres, so each round trip truck movement would be about 600 metres. With 50 pallets (at least) per sailing, and one pallet per truck, there would be about 30,000 'truck-metres' per sailing for pallets. That equates to 19 miles travelled by one of the smaller heavy-duty, diesel-powered, exhaust-emitting, noisy fork-lift trucks for every sailing.

2.3 In addition there would be up to 18 small containers per sailing, which means another 5,400 truck-metres – 3½ miles – for the 10-tonne fork-lift truck.

2.4 Evidently, then, this development would constitute a persistent source of noise and nuisance to residents and visitors, starting from early in the morning because of the

need to separate passenger and freight loading so far as possible, and well within earshot of the Jubilee Pool, the War Memorial and the Holy Headland.

2.5 Implementing Option A would also mean missing the opportunity to remove much heavy lorry traffic from narrow seafront roads and alongside the promenade. And we would be left with an insurmountable block to regenerating the area as an integral part of the town of Penzance.

2.6 Furthermore, Option A is in direct conflict with policy TV-20 of the Penwith Local Plan, which is still in force:

The growth of the town centre along Market Place, Market Jew Street and Causewayhead has meant that the town has to some extent 'turned its back' on the harbour and it is considered important to encourage development that will reverse this situation and re-establish links between the two areas.³

Unaccountably, this conflict between Option A and policy TV-20 of the Penwith Local Plan was not mentioned in the Case Officer's December Report.

2.7 Reconnecting the harbour with the town centre has much to commend it, and is exactly what they are planning to do in Falmouth. But if the Council goes for Option A, pedestrians will find that from the foot of Causewayhead they will be able to saunter down historic, atmospheric Chapel Street – and then discover heavy lorries, forklift trucks and freight sheds on the seafront. This can hardly be conducive to attracting new and returning visitors to the town.

2.8 There is no way in which these effects of the proposed works can be mitigated.

2.9 The proposed demolition works involve doing irreparable damage to the South Pier, which is a hugely valuable part of the heritage of Penzance and constitutes a physical record of the maritime history of the town. The construction works will also have unpredictable effects on other listed buildings in the setting of the South Pier. It is proposed that blasting will take place, but it appears from the reports that have been published by the Route Partnership that the effects of this on the listed Jubilee Pool close by have never been considered.

2.10 Although the construction works would be transitional, they would have lasting effects by virtue of seriously disrupting the town's tourist trade for two summer seasons and seriously hitting the livelihoods of everyone engaged in it. There must be a considerable likelihood that some concerns would go out of business. Although the proprietors of guest houses and B&Bs away from the seafront, such as those in Alexandra Road, may see themselves as profiting from an influx of contractors' staff, to support Option A on those grounds would be a classic case of giving private, short-term gain priority over the long-term public interest and the well-being and prosperity of the town as a whole.

3. The Cabinet's decision that the Application should be resubmitted to your Committee should be resisted because it was based on inadequate and incomplete information.

3.1 The evidence for this ground of my objection is as follows:

3.2 *The information presented about the respective capital costs of Options A and C was selected to exaggerate the difference between them.* The report to Cabinet said:

Approvals for Option C would not be in place before Winter 2010 and therefore a 12-month delay in the harbour's construction would be experienced, to suit the seasonal needs of marine works. The consequential delay in implementing Option C will increase the project costs by approximately £5m. ... The harbour works are projected to increase by £1.5m for construction inflation and the vessel cost is expected to increase by £3.5m due to the Euro to Sterling exchange rates. The vessel contract is in Sterling but extension of tenders or re-tender invites shipyards to review their prices. We were advised by yards that between June and October 2009 the exchange rate realised £1.75m of their risk allowance for exchange rate changes.

It is correct that on 1 June 2009 the Euro was valued at £0.868 and that on 13 October 2009 it was valued at £0.941, an 8.4% rise against the £ sterling. However, on 20 January 2010, when the papers for the Cabinet meeting were published, the Euro was valued at £0.869. *Thus the exchange rate was almost back to where it had been on the previous June 1st, almost eliminating that £3.5m expected increase if Option C were chosen!* This information, readily available, was not provided to the Cabinet at its January 25th meeting.⁴

3.3 Two things follow from this. One, the figures used to justify Option A over Option C were arbitrary. Two, by opting for a specially-designed ship to be built abroad, the Council finds itself basing its decisions on guesses about future rates of exchange in currency markets that are in a highly volatile state. In effect, it is embarking on a massive gamble with public funds, some of which will come from council tax-payers. This could be avoided by buying an already-existing fast ferry (see 4.5-4.7 below).

3.4 Option A has been justified over Option C on the grounds that freight carriage costs would be lower. The Halcrow Group report included a comparison of the freight transport costs of Options A and C. For Option A two figures were provided. If forklift trucks were to be used to take freight from lorries to the depot on Battery Rocks beach and from there to the ship on the Lighthouse Pier, the cost of operation would be £44.76 per tonne of freight transported. However, health and safety concerns, and noise levels during early morning operations, could well force the use of 'MAFI' tractors and trailers instead: if this were the case the operating cost would rise to £59.34 per tonne of freight transported. For Option C, the figure given by the consultants would be £56.60 per tonne of freight transported.

3.5 So we see that the answer to the question 'Which option is cheaper to operate, A or C?' depends not on what construction is undertaken but on what equipment would be used in the case of Option A to move goods around on the harbour. The report to Cabinet made no mention of this, or of any attempt to discover whether the use of MAFI tractors and trailers can be avoided.

3.6 The costing of the harbour works for Option A, as notified to the Cabinet, does not include an allowance for 'optimism bias', as the Department for Transport requires. The report to the Cabinet gave the estimated cost of harbour works for Option A as £32.845 million. The minutes of the meeting show that in response to a question from myself at the Cabinet meeting,

the Head of Transportation stated that optimism bias applied at the very early stages of a project to allow for unforeseen expenditure and therefore this would not apply now given the stage of the project. However, contingencies had been built in to the pricing of the project.

This understanding of the concept of 'optimism bias' is mistaken.

3.7 The Department for Transport publication *Procedures for Dealing with Optimism Bias in Transport Planning: Guidance Document*,⁵ published in June 2004, refers to guidance from HM Treasury which 'notes that there is a demonstrated, systematic tendency for project appraisers to be overly optimistic and that to redress this tendency appraisers should make explicit, empirically-based adjustments to the estimates of a project's costs, benefits and duration'. The DfT *Guidance Document* says clearly (on page 4):

The established uplifts for optimism bias should be applied to estimated budgets *at the time of decision to build a project*. (My italics)

The 'time of decision to build a project' is when the full business case is presented to the DfT. (*Guidance Document*, page 2).

3.8 Based on past experience, the uplift for a building project could be as much as 51%. At that top level, that would bring the cost of the harbour works up to nearly £50 million. With £34.248 million secured from the DfT and £11 million from Convergence funding, and taking into account the projected cost of the new vessel (£27.403 million), that would leave the Council having to borrow nearly £32 million, more than twice as much as the amount currently budgeted (£15 million). The burden of this would fall on council taxpayers. Cabinet members were not aware of this when they decided to send the application for Listed Building Consent back to the Strategic Planning Committee.

3.9 Council officers have not enquired into the possibility that a recent finding by the European Commission could allow central government to subsidize the Isles of Scilly Link. In October 2009, the European Commission issued a finding that the Scottish government's subsidy of Scottish ferry routes, including services to Orkney, is compatible with rules governing state aid.⁶ In response to another question from myself at the Cabinet meeting on January 25th, whether the Council had investigated whether

a similar subsidy could be available for the ferry route to the Scillies, the Cabinet Member for Highways, Transport and Planning (Councillor Hicks) responded:

The County Council sought advice from the Department for Transport (DfT) early in the project to determine if there were any special funding mechanisms available to lifeline links. The DfT advised that there is no recognition of 'lifeline services' and confirmed that each service should be considered on its own merits. DfT further advised that subsidies are only justified if it is evident that key services cannot be operated without the subsidy. The operation of the Isles of Scilly Link has been shown to be viable without subsidy as demonstrated in the Cabinet report.

So we see that Council officers have not even asked whether the *recent* EC finding has opened the way to obtaining a central government subsidy for running the loS route.

3.10 As for the viability of the loS Link, Councillor Hicks said in the *Western Morning News* on 17 November 2009 that the prime concern of the Route Partnership has not been to reduce capital costs, which will largely be covered by grant funding but to decrease running costs, which will not be covered by such funding.⁷

3.11 What this means, in plain language, is that Penzance would be subsidizing the running costs of the loS Link by putting up with an industrial estate situated on Battery Rocks. This has not been made clear to the Cabinet.

3.12 And if, because of the officers' failure to allow for optimism bias, the capital costs turn out to be significantly higher than the Cabinet has been told, council tax-payers in the whole of Cornwall will be subsidizing the operation of the loS Link. Again, Cabinet members have not been made aware of this.

3.13 *Cabinet members have not enquired into the risk attached to the project.* The report to the Cabinet meeting on January 25th included a small table on the risk attached to the project. Risk Register Ratings fall into three categories: 1-8 Low/Moderate (Green); 9-15 High Risk (Amber); 16-25 Extreme (Red). The loS Link project was shown to have a rating of 16: Extreme (Red). Astonishingly, although lower down on the same page there is a reference to legal risks, there is no mention in the report of how that 'Extreme' rating was arrived at, or of its significance. Moreover, *not a single Cabinet member asked a question about it!*

4. Although you have been told repeatedly that approving the Application for Listed Building Consent is necessary in order for the sea link between Penzance and St Mary's to continue, this is not correct.

4.1 Your Committee was told in the Case Officer's report last December:

The works [that are the] subject of this application form an integral and essential part of the overall scheme. The proposal forms an element of the Route Partnership's larger projects that together secure the future continuation of a sea service between Penzance and St Mary's. (para 6)

This is the 'last piece of the jigsaw' argument. Unfortunately for it, the jigsaw is faulty. The problem with it can be traced back to the setting up of the Route Partnership. Instead of producing a proper set of terms of reference, and asking the question 'What kinds of lifeline do the Isles of Scilly need?', which would have meant looking at *all* modes of transport to and from the islands, it produced a set of vague aspirations (grandly termed a 'Partnership Charter') and, after toying briefly with the idea of strengthening the helicopter service, focused all its efforts on the sea link alone.

4.2 This is still the case. You were told (CODR, para 16):

The sea link is important for the people of the Islands to reach any part of Cornwall, the British mainland and Europe.

One would not know, from reading this, that there are year-round scheduled air services from St Mary's to Newquay, with onward flights to London, Bristol, Manchester, Newcastle, Leeds/Bradford, Glasgow, etc. No islander would think of using the Scillonian to start their journey to one of those places.

4.3 And if the RP had paid attention to the helicopter service, it would have been aware long before now of the fragility of that service, which connects Penzance with St Mary's and Tresco. It is this service, not the *Scillonian*, that has provided a passenger lifeline from the Scillies to Penzance. It is still essential to Scillonians who have to get to Penzance in an emergency, or early in the morning for onward travel, or who have business to transact in Penzance and have no other way of getting there and back in a day.

4.4 But the helicopter service is visibly under threat. It suffers frequent breakdowns⁸ and delays: the aircraft are ageing, and spares are becoming more difficult and more expensive to obtain; and fuel consumption is high, so profitability is particularly vulnerable to rises in fuel costs. So one of the questions that the Route Partnership ought to have addressed, but never has, is this: how can we provide a passenger lifeline from the Scillies to Penzance when the present helicopter service goes? (If in future the sole air service from the Scillies is to be provided only by fixed-wing 'Skybus' services that bypass Penzance, this possibility ought to be on the table and discussed. It has huge implications for the economy of Penzance.)

4.5 The nearest sea-borne approximation to the helicopter service would be a fast ferry. The period since 2003 has seen a growth in the number of ferry services that make use of a 'fast ferry' vessel. Close to home, the SevernLink company is about to launch a service across the Bristol Channel between Swansea and Ilfracombe (25 nautical miles, to be covered in 50 minutes). Their fleet comprises 40-meter Kvaerner 'FlyingCat' catamarans, capable of running at speeds of up to 34 knots and carrying up to 360 passengers, all seated, in a steady and balanced ride.⁹ The Cloud X 'SWATH', also a fast and comfortable twin-hulled sea-going vessel but in effect riding on a pair of submarines, is another possibility.¹⁰

4.6 The Route Partnership has never made a systematic study of these possibilities – its own proposal is essentially to replace an old tub with a new tub – but a fast ferry from Penzance would be much more of a passenger lifeline than the old or new *Scillonian*, and would assist the economy of the Scillies by giving day trippers more time to spend on the Scillies, including more time to visit the off-islands. Spending more time equates to spending more money, of course, all helping to make the most of the Scillies' economic potential.

4.7 A fast ferry would also assist the emerging upmarket 'resort economy' in the Scillies, centring on luxury hotels and holiday cottages.¹¹ Anecdotal evidence and commonsense tell us that upmarket visitors find the helicopter link more attractive than a slow, pitching, one-class boat. Here, then, is another reason for considering a fast ferry to replace the helicopters.

4.8 An attempt has been made by the Chairman of the Penzance Chamber of Commerce to 'sell' the proposed new boat as offering 'mini-cruises' from Penzance, with on-board facilities such as bars, a restaurant and a cinema. While this might attract day-trippers from Penzance – in calm weather! – it will provide Scillonians with only a mid- or late-afternoon departure from St Mary's and no possibility of getting to Penzance and back in a day, and if it is patronized by a 'booze cruise' clientele it will be most unlikely to attract upmarket visitors. (It is also questionable whether a boat that will operate as a cruise vessel rather than an essential passenger lifeline would qualify for EU Convergence Funding.)

4.9 In contrast to the passenger lifeline to the Scillies, the freight lifeline does not require a fast vessel. Indeed, the needs of passengers and freight are so different that, as the Isles of Scilly Steamship Company concluded some years ago, it makes sense – logistically and economically – to run separate ships.

4.10 In this context it should be noted that in a statement dated 14 January 2010 (and placed before the Cabinet on January 25th), the Chairman of the Isles of Scilly Steamship Company said that the Company

has stated its intention to continue operating for the foreseeable future ... Professional advice received by the Company indicates that it is probable that *Scillonian III* could, with manageable investment, be maintained in class until at least 2014. The *Gry Maritha* freight vessel could similarly be maintained in class until 2015.

The Ministerial statement in the House of Commons on January 5th that 'there is no deadline' on funding¹² makes it clear that there is some breathing space, and it would be sensible for the Council to take advantage of it. It is of course inconceivable that a British government, whatever its political complexion, would ever abandon the Scillies.

4.11 In short, the Route Partnership has not executed its project competently, through failing to consider freight and passenger 'lifeline' needs. The implication for your committee is that you will be doing both the Scillies and Penzance a great favour by *not* approving the Application before you. By withholding your approval you will be opening

the door to a proper consideration of what is best for both the islanders and the people of Penzance.

5. Council officers have not followed the Government's planning policy guidance, and you have not been correctly informed about it.

5.1 The Case Officer's Report prepared for you last December said (paras 95-96):

The primary guidance in assessing the principle of the proposals ... is included within PPG 15: *Planning and the Historic Environment*:

... Paragraph 1.2 clarifies that the objective of the planning process should be to promote sustainable economic growth, and make provision for development to meet the economic and social needs of the community.

This is actually *not* what PPG 15 says. Paragraph 1.2 reads, in full:

1.2 The function of the planning system is to regulate the development and use of land in the public interest. It has to take account of the Government's objective of promoting sustainable economic growth, and make provision for development to meet the economic and social needs of the community. As PPG1 makes clear, planning is also an important instrument for protecting and enhancing the environment in town and country, and preserving the built and natural heritage. *The objective of planning processes should be to reconcile the need for economic growth with the need to protect the natural and historic environment.*¹³ (My italics)

As you see, the CODR omitted all mention of what PPG 15 says about the objective of reconciling the need for economic growth with the need to protect the natural and historic environment. **To say, as the CODR did, that PPG 15 describes the objective of the planning process as merely 'to promote sustainable economic growth' was to fundamentally misrepresent it. PPG 15 calls for a balanced assessment, especially necessary for Penzance, where the natural and heritage environment is a vital economic asset to the town.**

5.2 Unfortunately misrepresentation was a recurrent feature of the CODR, in particular the portrayal of judgments and opinions as unassailable truths. This is illustrated by an extract from paragraph 111:

[It] has been demonstrated that an appropriate level of assessment has been carried out in order to ensure that the proposed works are the only viable option in order to maintain and secure the long term future of the link to the Isles of Scilly, which has resulted in the current scheme.

Cutting through the jargon, you were told that the assessment carried out had been demonstrated to be 'appropriate' and that the proposed works were 'the only viable option'. These are judgments, and should have been open to you to question, but you were not given the information that would have enabled you to do that. The inference is

plain: it was your job to rubber-stamp the proposal, and you didn't really have any alternative. You were being *pressurized* to do what the people driving Option A wanted.

5.3 In the CODR there are some 30 instances of 'It is considered that ...' or 'Such-and-such is considered to be ...'. The use of this form of words appears to be a strategy intended to discourage questioning by elected members. I hope it will not be successful.

* * *

Sources [All web pages accessed on February 15, 2010]

- 1 *The role of English Heritage*. Online at <http://www.english-heritage.org.uk/server/show/nav.19366>
- 2 Halcrow Group, *Penzance Harbour – Appraisal of Alternatives*. Online at <http://www.ioslinkharbours.co.uk/downloads/Penzance%20Option%20Appraisal%202.pdf>
- 3 Policy TV-20 is online at http://www.cornwall.gov.uk/local_plan_penwith/text/text07.htm
- 4 European Central Bank, *Statistics*. Online at <http://www.ecb.int/stats/exchange/eurofxref/html/eurofxref-graph-gbp.en.html>
- 5 *Procedures for Dealing with Optimism Bias in Transport Planning*. Online at http://www.dft.gov.uk/pgr/regional/ltp/major/coll_proceduresfordealingwithopt/eduresfordealingwithopti3688.pdf
- 6 'Europe rules CalMac subsidy for lifeline routes is within law', *The Scotsman*, October 28, 2009. Online at <http://news.scotsman.com/caledonianmacbrayne/Europe-rules-CalMac-subsidy-for.5776284.jp>
- 7 Graeme Hicks, 'Council has risen to ferry link challenge', *Western Morning News*, November 17, 2009. Online at http://findarticles.com/p/news-articles/western-morning-news-the/mi_8027/is_20091117/council-risen-ferry-link-challenge/ai_n44207437/
- 8 Such a breakdown was highlighted in the national press as recently as January 2, 2010. See <http://www.guardian.co.uk/money/2010/jan/02/stranded-by-british-international-helicopters>
- 9 For more information on this service see <http://www.severlink.com/ferry>
- 10 The SWATH principle is outlined at http://en.wikipedia.org/wiki/Small_waterplane_area_twin_hull
See also <http://www.trythallshipping.co.uk/CLOUD%20TEN%20WEB%20PAGE.htm>
- 11 See <http://www.duchyofcornwallholidaycottages.co.uk/tariff-availability.php> and <http://www.telegraph.co.uk/news/uknews/2661401/Prince-of-Wales-in-legal-battle-over-Isle-of-Scilly-homes.html>
- 12 'There's no deadline on funding, says Minister', *The Cornishman*, January 7, 2010
- 13 *Planning Policy Guidance 15: Planning and the Historic Environment*. Online at <http://www.communities.gov.uk/publications/planningandbuilding/ppg15>