



Appeal Decision

Inquiry opened on 23 January 2018

Site visit made on 31 January 2018

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2018

Appeal Ref: APP/D0840/W/17/3175849

Land north of Pendennis Castle, off Castle Drive, Falmouth, Cornwall

- 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 Middlepoint Developments Limited against the decision of Cornwall Council.
 - The application Ref PA15/10225, dated 31 October 2015, was refused by notice dated 22 November 2016.
 - The development proposed is site remediation, demolition of existing structures and redevelopment to provide 35 residential units, a reception building, associated leisure facilities (including a swimming pool and tennis court), storage areas, underground parking, sea wall, new access arrangements, landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The Inquiry sat for 7 days between 23 and 31 January 2018. There was an accompanied visit to the site and surroundings on 31 January 2018. I carried out unaccompanied visits to various locations referred to in the evidence during the course of the Inquiry.
3. The Cottage is a residential property located close to the appeal site. It is owned and occupied by Spiral Collective Housing Co-operative Ltd (Spiral). A number of witnesses spoke on behalf of Spiral during the Inquiry.
4. At the Inquiry the appellant requested that the appeal be determined on the basis of amended details of the proposed access track. The amendments sought to reduce the extent to which the existing sloping ground would need to be excavated to accommodate a footway. The amendments also proposed a localised narrowing of the track, (with a shared surface), at the point where it crosses an archaeological feature known as the hornworks. The narrowing was intended to minimise any impacts on that feature.
5. The amendments are limited in scope and would not alter the substance of the proposals for which permission is sought. Having first obtained the views of relevant officers, the Council did not object to the revised details being taken into account. Spiral had concerns about the scheme being amended at a relatively late stage in the proceedings. Nevertheless, there was an opportunity for interested parties to comment on the changes during the

course of the Inquiry, through further written or oral representations. I am satisfied that no-one would be prejudiced by the revised details being taken into account and have determined the appeal on this basis.

6. It emerged during the Inquiry that some of the appellant's technical reports had been prepared on the understanding that the access track would not be widened when in fact the plans on which the appeal was determined showed that it would be. This inconsistency was identified by Spiral. The appellant responded by producing some updated reports, for example in relation to trees and ecology. Further material was also submitted in response to matters raised by South West Water and A&P Group (the operator of Falmouth docks). The submission of this additional information was also a matter of concern to Spiral.
7. Having reviewed the amount and complexity of the additional information, my conclusion was that it would be reasonable to ask the parties to respond during the course of the Inquiry. I invited some of those speaking on behalf of Spiral to speak again and gave an opportunity for others to make further written submissions. South West Water returned for the final day of the Inquiry and Historic England and A&P Group made further written representations.
8. An Agreement under s106 of the Town and Country Planning Act 1990 (the Agreement) was submitted at the Inquiry. The Agreement would make provision for financial contributions to affordable housing, primary education and the Special Area of Conservation/Special Protection Area. It would also make provision for off-site highway works and the provision of electric car charging points within the proposed development.
9. The need for these obligations was not controversial. The Council provided written and oral evidence in relation to compliance with Regulation 122 and (where appropriate) Regulation 123 of the Community Infrastructure Levy Regulations 2010. I am satisfied that the obligations would be consistent with those Regulations and, accordingly, have taken them into account in my decision.
10. The draft of a revised National Planning Policy Framework was published for consultation in March 2018 after the close of the Inquiry. As a draft document it is subject to change. I have therefore attached very little weight to it.
11. World Fuel Services Ltd (WFS) made representations after the close of the Inquiry to the effect that part of the land required for the access works is owned by Falmouth Petroleum Limited, (a subsidiary of WFS), rather than by Azure Oil Services. The parties have had an opportunity to comment on this representation. The appellant has certified that both Azure Oil Services and Falmouth Petroleum Limited were given notice of the application and the appeal. Moreover, WFS made representations to the Council on the application¹. Consequently no prejudice has arisen. I note that WFS has not agreed to the use of the land in question but this does not affect my findings on the planning merits of the appeal.

Main issues

12. The main issues are:

¹ OP14

- the effect of the proposal on the historic environment
- whether the proposal would provide satisfactory living conditions for future occupiers
- the effect of the proposal on the current and future operations of Falmouth docks and Falmouth Sewage Treatment Works
- the nature and extent of any economic, social and/or environmental benefits of the proposal

Reasons

The effect of the proposal on the historic environment

The heritage assets which would be affected

13. Pendennis Castle stands on a peninsula which projects into Falmouth Bay. Together with St Mawes Castle it guards the entrance to the large natural anchorage of Carrick Roads. Pendennis Castle, together with much of the headland, is a scheduled monument (SM) known as the Pendennis peninsula fortifications (PPF). The reasons for designation state that this is one of the finest examples of a post-medieval defensive promontory fort in the country. Pendennis was a strategic naval base from the 1540s until it was demilitarised in the 1950s. It demonstrates the development of coastal defence from Tudor to modern times. The buildings of the Henrician and Elizabethan castle demonstrate the development of gunnery methods. There are Civil War defences, including the hornworks and a redoubt, which defended the castle on the landward side. There are also later defensive works from the 18th, 19th and 20th centuries.
14. Some of the buildings within the SM are listed buildings in their own right. These include the Grade I Castle, which was built for Henry VIII and later extended, and the Grade II listed early 20th century Barrack Block. The Little Dennis Blockhouse (Grade I listed) was constructed close to the water's edge at the same time as the Castle.
15. Falmouth Conservation Area (FCA) includes the historic urban core of the town, together with areas of 19th century residential development. Much of the headland is also included in the FCA. The growth of Falmouth as a prosperous trading port was made possible due to the protection afforded by the PPF.
16. St Mawes Castle lies on the eastern side of Carrick Roads. The reasons for its designation as a SM note that the Henrician artillery castle survives well. The reasons go on to say that the siting of the castle, together with its association with the contemporary works at Pendennis, illustrates the defensive strategies and capabilities of the period. St Mawes Castle is also a Grade I listed building.
17. The designated heritage assets described above are those which are of particular relevance for the purposes of this appeal decision. The history of their development and further details of their individual and collective significance are described in the evidence. This contextual information was not generally controversial and it is not necessary for me to repeat it here, beyond noting that this is a group of assets of national importance. Together,

they illustrate the continuing strategic importance placed on the defence of Carrick Roads since 1540 and the evolving technologies which have been deployed.

18. Other designated heritage assets have been identified in the evidence, including further listed buildings within the PPF. There is also a conservation area at St Mawes. However, by the end of the Inquiry no party was arguing that there would be significant impacts on the settings or the significance of these assets. I see no reason to take a different view. There was also some discussion of non-designated heritage assets in and around the appeal site. That is a matter I return to below.

Approach to decision making

19. The main part of the appeal site, where residential development is proposed, is not subject to any heritage designations. It is linked to Castle Drive by an access track which is partly within the PPF SM and the FCA. The proposal would have some direct impacts on the PPF SM and FCA and these are included in my overall assessment. However, many of the heritage impacts discussed at the Inquiry were effects on the settings of heritage assets.
20. SMs are protected by the Ancient Monuments and Archaeological Areas Act 1979 (AM&AAA) which requires Scheduled Monument Consent (SMC) to be obtained before any works of alteration or demolition are carried out². The AM&AAA does not afford any statutory protection to the setting of a SM and the grant of planning permission for works affecting a SM does not obviate the need for a separate SMC for such works. Nevertheless, the impact of a proposal on the setting of a SM is a material consideration in a planning context.
21. The Planning (Listed Buildings and Conservation Areas) Act 1990 (LB&CAA) requires special regard to be had to the desirability of preserving the setting of a listed building when deciding whether to grant planning permission for a development which affects that setting³. For conservation areas, the LB&CAA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area when making planning decisions relating to land within the designated area⁴. In this appeal, the statutory duty relating to conservation areas applies to those of the proposed works to the access track which would fall within the FCA.
22. The National Planning Policy Framework (the Framework), together with Planning Practice Guidance (the Guidance) sets out policy advice relating to the historic environment. Listed buildings, conservation areas and SMs are amongst the types of asset referred to in the Framework as *designated heritage assets*. The Framework states that, when considering the impact of a 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. Significance can be harmed through development within the setting of a designated heritage asset⁵.

² Section 2, AM&AAA

³ Section 66(1), LB&CAA

⁴ Section 72(1), LB&CAA

⁵ The Framework, paragraph 132

23. Thus, although the AM&AAA does not afford statutory protection to the setting of a SM, the policy set out in the Framework requires the same approach to the setting of a SM as it does to the settings of other types of designated heritage assets.

The contribution of setting to the significance of the heritage assets

24. Pendennis Castle, Little Dennis Blockhouse and St Mawes Castle were constructed at the same time for the purpose of defending Carrick Roads. Subsequent extensions and alterations to the defences at PPF sought to serve the same purpose. For all of these assets, the relationship between the structures themselves and the landform of the headlands and the natural harbour is central to the ability to experience the assets and understand their function. This is a group of assets for which setting makes a very important contribution to significance.
25. For the same reasons, insofar as the PPF forms part of the FCA, the setting contributes positively to the significance of the FCA. (It should be noted that the statutory duty referred to above in relation to conservation areas applies only to land within a conservation area).
26. Pendennis Castle stands in an elevated location and is prominent in views from many locations around the estuary, including St Mawes Castle and St Anthony Head. The ability to appreciate the Castle in views from the water is also an important feature of its setting. In these views three broad character zones are apparent. First there is the headland itself, characterised by its rocky shoreline and wooded slopes and surmounted by the Castle and Barrack Block. Second there is the town of Falmouth. The third zone, which has an industrial character, includes the docks, associated industrial buildings, large oil storage tanks and Falmouth Sewage Treatment Works (FSTW).
27. The degree to which there is a clear distinction (or a more gradual transition) between these character zones and the extent to which the appeal site relates to one or other of the zones were controversial matters at the Inquiry. The main part of the appeal site is not a natural part of the headland. A sea wall was built in the 1940s to accommodate oil storage tanks on what had previously been an area of rocky foreshore. The tanks were covered with earth and what can be seen today is a grass covered plateau with battered sides.
28. When standing on the site, various pipes and vents can be seen which give some understanding of the former use. However in most views these features are not readily apparent. The fact that this is an engineered structure is discernible but not striking. The sea wall around the appeal site is lower and less visually prominent than that of the nearby FSTW. In longer views, such as those from St Mawes, the appeal site tends to blend in with the wooded slope behind it.
29. Over time there has been some degree of blurring of the distinctions between the character zones described above. First, the appeal site itself is a former industrial site which was once functionally related to the docks. However, that association is no longer obvious in visual terms for the reasons set out above. There is no longer a functional link because the use of the site ceased in 2014. The Lunar Valve House, associated with a sewage outfall, is located to the east of the appeal site. There are also some residential uses on the

headland, at The Cottage and Middlepoint Bungalow⁶ and some modern coastguard buildings to the east of the Castle.

30. Nevertheless, the overall impression of the headland is that it is a predominantly green and wooded area. The dominant built elements are the Castle keep and the Barrack Block, both of which appear on the skyline. Their visual dominance emphasises the fact that the PPF held a commanding defensive position. In the context of the headland as a whole, The Cottage and Middlepoint Bungalow are seen as isolated and minor features. Neither the Lunar Valve House nor the coastguard buildings stand out strongly in longer views. These buildings do not greatly alter the general character of the headland.
31. I note that the officer's report stated that, in the vicinity of the appeal site, the distinction between the town and the castle has been lost due to changes in the area over time. For the above reasons, I do not share that assessment. In my view the blurring of the distinctions between the three character zones has been relatively limited.
32. In views from around the estuary, and from the water, the appeal site appears as part of the headland. It is visually distinct from the industrial character zone, the easternmost extent of which is defined by FSTW. The appeal site is but one element in the extensive settings of the PPF and St Mawes Castle. Nevertheless, it occupies an important position within those settings because it falls within views which are important to the ability to experience these assets. Although it is a man-made feature, this is not strongly apparent in most views. In its current condition the site neither adds nor detracts much from the ability to understand and experience the relevant designated heritage assets.

Effect on the setting of the Pendennis Peninsula Fortifications (SM)

33. There would be some views of the appeal scheme from locations within the SM, in particular from Castle Drive and the nearby footpath. These views would be filtered by existing vegetation. Although the scheme would be visible in such views, I do not think that it would have much impact on the ability to experience the SM.
34. The whole of the headland can be experienced in views from St Mawes Castle. The predominant military structures are the Castle keep and the Barrack Block which are sited on top of a wooded ridge. There was some dispute as to whether the slope above the appeal site is a natural feature or an engineered structure. That is a point I return to below. In any event, the slopes are part of the SM and contribute to its significance. The appeal site is readily visible, appearing below and to the right of the Barrack Block. The appeal scheme would have the effect of introducing a major element of urban development along a largely undeveloped section of the shoreline. I consider that the height and horizontal extent of the scheme would be such as to compete with the scale of the military structures and erode their present status as the dominant built elements in the view.
35. The design of the scheme incorporates features intended to assimilate it into its surroundings. The highest parts would not rise much above the ridge level

⁶ Middlepoint Bungalow was being redeveloped to provide a replacement dwelling at the time of the Inquiry

of The Cottage and the scale would step down towards the east. The blocks would be arranged informally, rather than to any rigid building line, and there would be opportunities for views between some of the blocks (varying with the angle of view). Additional landscaping is proposed between and behind the blocks.

36. These design measures would offer a degree of mitigation. However, to my mind they would not avoid harm to the setting of the SM. The scale and extent of urban development would far exceed the other modern buildings on the headland. The effect would be to extend the industrial character zone eastwards, albeit with urban development of a residential character, for a considerable distance along the shoreline. This would significantly erode the distinction between the character zones which currently exists.
37. From St Anthony Head there is a fine view of the assemblage of military architecture on the headland. The dominant defensive position is apparent and the headland is seen as essentially green and wooded. Although the docks are in view, they are perceived as a distinct and separate element. From this angle the appeal site is seen jutting out from the shoreline. This makes its man-made origins rather more apparent. For the same reason, the appeal scheme would appear as a prominent new element of built development projecting out from the natural shoreline. As the scheme would be seen end-on, some of the mitigation measures described above would be less apparent.
38. As noted above, the ability to view the PPF from the water is an important aspect of their setting. In these views the Castle keep and Barrack Block are skyline buildings and the extensive wooded slopes are a key feature of the view. There would be a high magnitude of change from water views which are relatively close to the site, including views from the St Mawes ferry. At present, the wooded slope behind the site is fully in view, above the battered grass sides of the appeal site. These views would be radically altered by the scale of new development which would obscure a significant section of the existing wooded slope. Even allowing for the fact that there would be some glimpses between blocks, and the proposed new landscaping, this would be harmful to the setting of the SM.
39. Historic England considers that the slope behind the appeal site is an engineered glacis slope, designed to create a clear line of fire from the Castle. The appellant considers that it is a natural feature. Whilst the evidence before me is not conclusive on this point, the cross section drawing indicates that this part of the slope is so steep that it would be unlikely to provide a clear line of fire. This suggests it is more likely to be a natural feature. Even so, the slope is part of the SM and contributes to its significance as a designated heritage asset.
40. I have considered all the viewpoints around the estuary which have been identified in the evidence although I do not think it is necessary to describe each one here. The important common thread is that the distinction between the three character zones described above is apparent from a wide range of viewpoints.
41. It is also relevant to consider night time views. The Landscape and Visual Impact Assessment (LVIA) states that the *eastern end of the peninsula is essentially a dark environment* although there are strong light sources at

Falmouth docks and The Cottage and Middlepoint Bungalow provide low level light emissions⁷. The scheme includes mitigation, including underground parking and roof overhangs to reduce light spill.

42. Nevertheless, it is a feature of the design that the flats would have their main living/dining rooms facing out onto the estuary. Many of the flats would also have the main bedroom in this location. These rooms would generally have full height glazing designed to take advantage of the views over Carrick Roads. Having regard to the number of such windows, their size and the horizontal and vertical spread of the scheme, I consider that there would be a significant and harmful erosion of the predominantly dark character of the headland. That would add to the harm to the setting of the SM.
43. The appellant accepts that the proposal would result in *less than substantial harm* (as that term is used in the Framework) to the significance of the SM through development in its setting. This is characterised as a moderate adverse impact. The Guidance states that *substantial harm* is a high test which may not arise in many cases. Although the setting of the SM would be harmed by this proposal, significant elements of that setting would remain. I therefore consider that the harm should be regarded as *less than substantial harm*.
44. However, that does not mean that it should be regarded as minor or unimportant. On the contrary, within the broad spectrum of *less than substantial harm*, I consider that the harm resulting from this proposal would be towards the upper end of the scale. I reach this view because the appeal site has a key waterside location in views which are important to the ability to experience the SM, coupled with my finding that this is an asset for which setting makes a very important contribution to significance.

Direct impacts on the Pendennis Peninsula Fortifications (SM)

45. It is proposed to widen the existing access track, which has been cut into the slope of the ground, to accommodate a footway. This would require the excavation of a strip of land on the southern side of the track, which would be graded to a 45° slope. There would be no widening in the zone where the track passes through the hornworks, thereby avoiding any direct impacts on that feature. These works would require SMC, as noted above. However, for the purposes of my decision, I consider that these works would be minor and would be unlikely to harm the significance of the SM.

Effect on the settings of Pendennis Castle and the Barrack Block (listed buildings)

46. The Castle and Barrack Block are listed buildings in their own right. There would be no direct works to the listed buildings and the issue here is one of effects on setting. It is unlikely that there would be any direct inter-visibility between the appeal scheme and either of the listed buildings due to the effects of topography and vegetation. Nevertheless, as noted above, the Castle keep and the Barrack Block have extensive settings. The effects on those settings would be broadly similar to the effects on the setting of the SM⁸. For the reasons set out above, I consider that the proposal would result in harm to the settings of the listed buildings which would result in harm to

⁷ The Castle itself may also have some illumination

⁸ One difference to note is that the slopes, which are part of the SM, are not part of the listed buildings

their significance as designated heritage assets. The degree of that harm would be the same as the harm to the SM.

Effect on the setting of Little Dennis Blockhouse (listed building)

47. The Little Dennis Blockhouse is sited close to sea level at the end of the headland. Although part of the appeal site is in view from the listed building, the line of fire from the Blockhouse would not have extended to that area. Much of the appeal scheme would not be seen from Little Dennis, although Block G (the lowest block) would be in view. In my view this glimpse of the appeal scheme would have only a limited impact on the ability to experience the heritage asset and its relationship to the coastline.
48. Little Dennis Blockhouse is visible in the views from St Mawes Castle and St Anthony Head discussed above. Its setting would be affected by the appeal proposal, as already described. However, when analysed as an individual listed building, the impact would be less because it is the part of the SM which is furthest from the appeal site.
49. The view from the Flushing coastal path is of particular relevance to this listed building. Although the Blockhouse is a small element in a panoramic view, from this angle it stands out against the horizon at the very tip of the rocky peninsula. Its isolation from the Castle and its function of providing defensive fire at sea level are dramatically illustrated. To my mind this view contributes to the ability to experience this heritage asset. The appeal scheme would appear to occupy most of the gap between Falmouth docks and the listed building, diminishing the sense of isolation which is currently experienced. This would cause some harm to the setting and the significance of the listed building.
50. My assessment is that there would be *less than substantial harm* to the significance of the listed building. Having regard to the separation between the listed building and the appeal site, and the distance from the Flushing viewpoint, I would characterise this as being towards the lower end of the spectrum of such harm.

Effect on the setting of St Mawes Castle (SM and listed building)

51. There would be no direct works to the heritage assets and the issue is one of setting. It is convenient to describe the effects on the SM/listed building together as there are no material differences in the assessment. The importance of the view from St Mawes Castle to the PPF has been described above in relation to effects on PPF. However, the view is also important to the significance of St Mawes Castle. This is because the two castles were built at the same time to work as a pair in the defence of Carrick Roads. The inter visibility between the two is central to understanding their shared function.
52. It is right to point out that the appeal scheme would not directly block the line of sight between the two castles. Nevertheless, the character of the view from St Mawes to the PPF would be significantly altered. I have concluded above that the height and horizontal extent of the appeal scheme would be such as to compete with the scale of the military structures within the PPF and erode their present status as the dominant built elements in the view. Moreover, I have found that the proposal would extend development eastwards along the shoreline, significantly eroding the distinction between the character zones.

Because the visual relationship between the two castles is so important to their significance, I consider that these harms to the PPF would also amount to harm to the setting of St Mawes Castle.

53. The view from St Mawes beach is of considerable importance to the setting of St Mawes Castle. This is a view from sea level which emphasises the elevated siting of the Castle on its rocky headland. It also enables the two castles to be seen together, providing an appreciation of the way they were built to work together. Finally, this is a particularly picturesque view. The Castle is seen set slightly aside from the built-up area of St Mawes and Falmouth docks are hidden behind the headland.
54. The appeal site is readily visible, appearing immediately to the left of the St Mawes headland. The horizontal spread of the appeal scheme would occupy much of the gap (which is currently perceived as undeveloped) between the tip of the St Mawes Castle headland and the Barrack Block within the PPF. To my mind that would bring about a radical change to the character of the view.
55. Turning to the effect on night time views, I have concluded above that the proposal would result in a harmful erosion of the predominantly dark character of the Pendennis headland. That effect is likely to be particularly apparent in the view from St Mawes beach because the brightly illuminated docks are not seen from this angle.
56. My overall assessment is that the appeal proposal would result in harm to the setting and significance of St Mawes Castle (SM and listed building). In the terms of the Framework this would be *less than substantial harm* and I would characterise it as a moderate level of harm.

Effect on Falmouth Conservation Area

57. The PPF forms part of the FCA. It follows that the harm to the setting of the PPF identified above would also amount to harm to the setting of the FCA. In practical terms little turns on this point. There is no statutory test relating to the setting of a conservation area and, insofar as the policy tests contained in the Framework apply, I consider that the actual harm is the same as the harm already described above so it does not need to be assessed separately.
58. As noted above, revised information on tree loss/retention was submitted during the Inquiry. This indicated the extent of tree loss that would result from works to the access track. The impact would be greatest at the junction of the access track with Castle Drive where several trees would be lost. Two of these are good specimens (an ash and a beech⁹). Whilst the other trees are of less value individually, together this group contributes to the well-vegetated character of this section of Castle Drive. The appellant argued that many replacement trees would be planted. However, those would be within the main body of the site, at some distance from the junction, and would have no impact here.
59. Additional harm would arise from the loss of two good oak trees further along the track¹⁰ which are amongst the better specimens in this narrow strip of woodland. The result of the proposed access works would be a loss of trees which make a positive contribution to the conservation area. This would be

⁹ 542 and 543 on plan LL-228-P-004

¹⁰ 549 and 553

harmful to the character and appearance of the conservation area. In the context of the FCA as a whole the harm would be less than substantial, and minor, because the impact would be localised. Nevertheless, there would be harm to the street scene of Castle Drive due to the loss of trees.

Non-designated heritage assets

60. The *Fortress Falmouth* document refers to an underground observation station dating from 1889 which was used to control submerged explosive mines in the harbour entrance. Spiral's heritage evidence included details of an underground construction close to the western boundary of the appeal site which I saw during the site visit. From the visible remains, it appears that this is likely to be the observation station referred to in *Fortress Falmouth*. The construction is located at the top of a steep slope which would need to be altered to create a parking area. Consequently, it seems likely that it would be removed as a result of the appeal scheme.
61. The Framework states that a balanced approach should be taken to the loss of non-designated heritage assets, having regard to the scale of loss and the significance of the asset. On the evidence before the Inquiry, this is likely to be an asset of some interest because of its association with the development of defence technology. However, the evidence does not indicate to me that this is a matter which should carry great weight in this appeal. I attach limited weight to the likely loss of this non-designated heritage asset.
62. The appellant has carried out archaeological investigations which concluded that there are unlikely to be any remaining archaeological features within the main part of the site. Spiral suggested that a slope within the appeal site and an adjoining bank/ditch may be archaeological features associated with the Pendennis defences. However, there is insufficient evidence for me to attach weight to this factor.

Other heritage considerations

63. There was some debate at the Inquiry as to whether Sandy Cove, which is shown on the OS maps from 1880 to 1933, still exists. In my view the historic map sequence demonstrates that Sandy Cove no longer exists, as a result of land reclamation works at some point between 1933 and 1958. However, this does not alter my conclusion regarding the distinction between the three character zones identified above.
64. The appellant complained that the Council's case in relation to heritage matters at this Inquiry was not consistent with its proposal to allocate the appeal site for marine-related B1, B2 and B8 development in the draft Cornwall Council Site Allocations Development Plan Document. However, to the extent that there is any lack of consistency, it is not a matter for me to resolve. For the purposes of this appeal it is common ground that the emerging plan can only be accorded limited weight¹¹. I have reached my conclusions on the heritage impacts of the appeal scheme on the basis of the evidence before the Inquiry.

¹¹ Statement of Common Ground, paragraph 50

Conclusions

65. The proposal would result in harm to the significance of the PPF (SM), Pendennis Castle, Little Dennis Blockhouse and the Barrack Block (listed buildings) and St Mawes Castle (SM and listed building) due to development in the settings of these heritage assets. It would fail to preserve the settings of the listed buildings. It would fail to preserve the character and appearance of the FCA due to the loss of trees which contribute to the character and appearance of the conservation area. It would also result in the likely loss of a non-designated heritage asset, comprising an underground structure which is likely to be an observation station.
66. Policy 24 of the Cornwall Local Plan (CLP) seeks to conserve the significance of designated and non-designated heritage assets and their settings and to maintain the special character and appearance of conservation areas. It states that any harm to the significance of heritage assets must be weighed against the public benefits of the proposal. I return to that balance in the conclusion to this decision.
67. In the terms of the Framework, the harm to the significance of the SMs and listed buildings would be *less than substantial harm*. The Framework states that such harm should be weighed against the public benefits of the proposal. I return to that balance in the conclusion to this decision.

Whether the proposal would provide satisfactory living conditions for future occupiers

Noise

68. A noise impact assessment was submitted with the planning application. This found that external sound levels at the site were above the defined least observed adverse effect level due to the noise of waves breaking. This was considered to be a defining feature of the location and thus unlikely to cause disturbance. With regard to internal noise levels the report found that conventional building fabric would provide sufficient attenuation to meet the Council's criteria. At the Inquiry the Council's witness agreed that acceptable internal sound levels could be achieved, albeit that this may require windows to be closed. I see no reason to disagree.
69. The main source of noise which was of concern to the Council is Falmouth docks. The noise from the docks is variable. There can be times when few ships are berthed and noise levels are lower. At other times operations associated with ships in the docks can give rise to complaints. Some ships run their generators 24 hours per day whilst in the docks and there is a record of complaints relating to this particular noise source. The appellant carried out assessments of noise from Falmouth docks by reference to BS4142. This is a method which assesses the margin by which the rating level of the specific sound source exceeds the background sound level. The context in which the sound occurs is then considered.
70. Additional assessments were carried out following the Council's decision to refuse the application. The three assessments before the Inquiry were Scenario A (based on measured sound levels from the docks and FSTW); Scenario B (based on modelled sound levels for a ship with its generator

running at Duchy Wharf) and Scenario C (based on modelled sound levels for a ship with its generator running at Queen's Wharf).

71. The preliminary assessment of impacts for Scenarios B and C showed that the rating level at the most affected receptors would exceed the background by 9 and 12 dB respectively (0700 to 2300 hrs) and by a greater margin at night time. An increase of 12 dB is a preliminary indication that a significant adverse effect is likely, depending on context. Having considered the contextual factors, the appellant's noise consultant concluded that the impact would be less than adverse. In accordance with the BS4142 methodology, the contextual factors considered were the absolute noise level, the character and level of the sound and the sensitivity of the receptor and use of mitigation.
72. There was other evidence before the Inquiry regarding the character of the noise. In particular, the Council's Environmental Protection Officer gave evidence that ship generators emit a low frequency noise, not dissimilar to a bass beat, which is hard to insulate. Moreover, the record of complaints received by the Council shows that ship generators are the most frequent cause of dock-related noise complaints. That indicates to me that the character of the noise is found to be annoying by those experiencing it.
73. The effect on the internal noise environment of the proposed dwellings could be mitigated through attenuation provided by the fabric of the buildings. As noted above, this is a matter which could be controlled by a condition. However, this would not mitigate the impact on external amenity spaces. The appeal scheme features a large number of balconies and roof terraces. The plans show that these are not incidental or decorative features – they are significant areas clearly designed to be used for outdoor relaxation.
74. My assessment, in relation to Scenario C, is that the contextual factors do not suggest that the preliminary indication of a significant adverse effect should be adjusted to a finding of less than adverse. To my mind the BS4142 approach indicates that a significant adverse effect is likely.
75. There are limitations in applying the BS4142 approach here because of the highly variable nature of the noise source. Ships come and go, they may be berthed in various locations and may be subject to various operations (such as repair, refit or loading/unloading) whilst they are in the docks. Comparison of the three scenarios described above shows that the results are sensitive to the precise position of the vessel in question. The modelling was for a single ship (with its generator running) in one of 3 possible locations. However ships could be berthed in other locations, other noisy operations may be undertaken and there could be more than one ship engaged in noisy operations at a time.
76. A&P Group gave evidence about potential new commercial activities, including ship refitting at Northern Wharf, new wharf capacity in the vicinity of Western Wharf and use of land to the east of the Eastern Breakwater for storage and handling of bulk cargoes. None of these developments are certain, given that they depend on commercial decisions by potential customers. Nevertheless, in general terms there is evidence of market interest in additional use of the docks. Given the limited space available in the older parts of the docks, it seems likely that any additional activity would tend to be either on the outer wharfs (Queen's Wharf, Western Wharf and Northern Wharf) or the eastern land.

77. The eastern land is significantly closer to the appeal site than, for example, Duchy Wharf. The outer wharfs have fewer intervening structures between them and the appeal site. This may explain why Scenario C results in a higher impact at the appeal site than does Scenario B. In general, it seems to me that any expansion in the use of the docks is likely to be in areas which have a greater potential to affect the appeal site than activities in the older parts of the docks.
78. My attention has been drawn to an appeal decision relating to a proposal for student accommodation at the Ocean Bowl site in Falmouth¹². In that case the Council had not raised any objection on noise grounds. I have not been given any details of the noise assessment which was carried out, nor of the design details of the scheme. There is no evidence that it is comparable with the appeal scheme, except in the general sense that it is a residential scheme in Falmouth. I attach limited weight to this factor.
79. The appellant argued that existing residential areas in Falmouth are subject to similar levels of dock-related noise to those predicted at the appeal site. That may be so but the key consideration for this main issue is the effect on the potential residents of the appeal site. (I return to this point under the next main issue).
80. In forming an overall assessment it is necessary to bear in mind that there are likely to be periods, perhaps extensive periods, when noise from the docks would not have any adverse effect on residents. Scenario C is not a daily occurrence and any assessment needs to take account of the inherent variability which I have described. On the other hand, it is a feature of the dock's operations that, when noisy operations take place, they tend to occur 24 hours per day for several days at a time. This is because ships come into the dock for the purpose of some specific operation (such as repair, refit or loading/unloading). Once they arrive there is a commercial imperative to complete that operation as soon as possible. That is relevant in terms of the effect on the living conditions of new residents. There is evidence from the Council's complaints log that the character of the noise, together with the timing, does in fact lead to disturbance.
81. Turning to the sensitivity of the receptors, the scheme would provide numerous balconies and roof terraces. These are a feature of the scheme and are, no doubt, designed to take advantage of the attractive views out over the estuary. It is to be expected that occupiers would seek to make full use of these areas for outdoor relaxation and that they would want to open the full height glazed doors leading onto the balconies from the living rooms in good weather. They would therefore be sensitive to the noise environment. Finally, account should be taken of the potential for increased dock-related activity, particularly in areas which will potentially have a greater impact on the appeal site.
82. Drawing all of the above together, I conclude that there is likely to be a significant adverse effect on the living conditions of future residents of the appeal site as a result of noise from Falmouth docks.

¹² APP/D0840/W/17/3182360

Odour

83. The two main sources of odour affecting the appeal site are FSTW and an oil storage facility operated by World Fuel Services. The appellant's odour assessment found that odour from the oil storage facility would tend to be masked by odour from the FSTW. At the Inquiry discussion focused on the FSTW.
84. FSTW is located close to the western end of the appeal site. It is owned and operated by South West Water (SWW), the statutory sewerage undertaker. SWW advised that the appeal should not be allowed, having commented that it would be *most unwise to construct residential properties in such close proximity to an operational sewage treatment works*. SWW advised that, historically, it has received complaints about odours from FSTW.
85. The appellant's evidence accepted that, in the absence of any abatement works being carried out, parts of the site would be subject to an unacceptable degree of impact from odour emanating from FSTW. The written evidence suggested that the Primary Settlement Tank (PST) could be covered and odour abatement provided. The following planning condition was suggested:
- No development shall take place until an odour abatement scheme has been submitted to and approved in writing by the local planning authority. The scheme shall demonstrate that abatement measures to ensure odour from the adjacent sewage treatment works and the oil tanks is less than 3 OUE/m³ as a 98th percentile of hourly average concentrations within residential and communal areas of the site. The scheme shall include details of all required works to ensure that the 3 OUE/m³ standard is met, the timetable for the implementation of those works, their subsequent management and the arrangements for those works to be undertaken in accordance with the timetable. The scheme shall be fully implemented prior to the first occupation of any of the residential apartments and thereafter managed and maintained in accordance with the approved details.*
86. The Area Manager for SWW appeared at the Inquiry to give evidence about the FSTW and the implications of covering the tanks. He stated that FSTW has a catchment population of some 37,000 which is significantly increased by tourists in the summertime. It has a particularly tight environmental permit because of the nearby bathing beaches and shell fishery. Capacity will need to be increased in the future to accommodate population growth. He also stated that the PST is not the only source of odour. There are also two large activated sludge tanks and a centrifuge which extracts water from the sludge. The de-watered sludge is deposited into skips for disposal off site. All of these operations are in the open.
87. SWW further advised that covering tanks results in a number of technical issues. There is only one example of a covered tank in the SWW area and that has caused significant problems. Covering the tank results in concentrations of corrosive and hazardous gases which are generated in the treatment process. SWW considers that the ability to monitor the treatment process through visual inspection would be hampered and that staffing levels would need to be increased due to the increased hazards on site. On the other hand the appellant argued that technical solutions are available, drawing attention to an example in the Thames Water area, some examples in Ireland and technical guidance issued in Scotland.

88. The suggested condition did not resolve SWW's concerns. Nevertheless, SWW confirmed that, if planning permission were granted subject to the suggested condition, then it would co-operate with the appellant in an effort to arrive at a technical solution. Having regard to that assurance, I do not think that this is a case where there are *no prospects at all of the action in question being performed*¹³.
89. The Framework and the Guidance set out a number of other matters relating to the use of planning conditions, including the six tests referred to in paragraph 206 of the Framework. I have had regard to that policy and guidance, and to the particular circumstances of this appeal, in reaching an overall assessment as to the appropriateness of the suggested condition.
90. The first point to note is that the suggested condition requires works to be carried out on land and infrastructure belonging to SWW. The Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases¹⁴. The suggested condition does not expressly call for an obligation to be entered into. However, there was no dispute that, in order to give effect to the suggested condition, there would inevitably have to be a commercial negotiation leading to a binding legal agreement between the appellant and SWW. There might also be a need for a S106 Agreement involving the appellant, the Council and SWW. The practical effect of the suggested condition is that it would limit the development that could take place before such an agreement (or agreements) had been entered into.
91. The Guidance indicates that conditions of this nature may, in exceptional circumstances, be appropriate in the case of more complex or strategically important development. However, the appeal relates to a proposal for just 35 residential flats. Self-evidently it is neither complex nor strategically important. Moreover, where such conditions are contemplated, the Guidance states that the heads of terms or principal terms need to be agreed prior to permission being granted to ensure that the test of necessity is met and in the interests of transparency. In this case SWW expressly advises against the grant of permission subject to the suggested condition. There were no heads of terms before the Inquiry. In my view the suggested condition does not accord with the Guidance in these respects.
92. Second, it is important to note that there has been no engineering study or feasibility work carried out in relation to the suggested scheme. The appellant's written evidence suggested that the scheme might relate to the PST but, by the end of the Inquiry, it appeared to be accepted that other significant elements of the process might also need to be enclosed. The information submitted about other locations is of little assistance in the absence of any assessment of what might work at this particular STW. In my view SWW provided convincing evidence that enclosing elements of an existing STW is far from being a straightforward matter. This was confirmed by my site visit where I saw that there is a significant amount of fixed plant associated with the tanks which may also need to be enclosed. Clearly, any proposals to enclose the tanks would require detailed investigation of the pros and cons by suitably qualified experts.

¹³ Planning Practice Guidance, reference ID 21a-009-20140306

¹⁴ Planning Practice Guidance, reference ID 21a-010-20140306

93. Consequently, if I were to impose the suggested condition, I would have only a limited understanding of the practical outcome, for example in relation to the nature of new plant and/or structures and any impacts they may have. The Guidance states that a condition should make it clear to the applicant and others what must be done to comply with it¹⁵. Although the suggested condition contains a numerical performance standard, the reality is that there is currently very little understanding of what would actually have to be done to meet that standard. In my view that level of uncertainty would be inherently undesirable and inconsistent with the Guidance.
94. Third, it is not clear to me how the appellant (or any successor in title) would be in a position to ensure that the performance standard would continue to be met over time. The ongoing management and maintenance of the scheme would be in the hands of SWW. In closing, the appellant submitted that this was simply a matter of a commercial negotiation. It was suggested that mechanisms such as commuted payments and performance bonds could be deployed. However, I find it hard to envisage an arrangement which would give the appellant detailed control, in perpetuity, over complex infrastructure operated by a statutory undertaker. There was no outline proposal for any such arrangement before the Inquiry. I consider that it is unlikely that the suggested condition would be enforceable in the long term.
95. Having regard to all of the above factors, I do not think that it would be appropriate to impose a condition in the terms suggested by the appellant.

Conclusion on the second main issue

96. The appellant has accepted that the impact of odour from FSTW would render the site unsuitable for the appeal scheme in the absence of odour abatement at FSTW. There was no scheme of abatement before the Inquiry and the appellant suggested that this is a matter which could be covered by a condition. However, for the reasons given above, I do not think that it would be appropriate to impose a condition in these terms. It follows that the appeal scheme would not provide satisfactory living conditions for future residents, either in respect of odour or in respect of noise.
97. The proposal would conflict with Policies 12 and 13 of the CLP which together seek to avoid adverse impacts from noise and odour. It would also be contrary to CLP Policy 16 which seeks to improve the wellbeing of Cornwall's residents.

The effect of the proposal on the current and future operations of Falmouth docks and Falmouth Sewage Treatment Works

Falmouth docks

98. The general importance of ports to the UK economy is set out in the National Policy Statement for Ports. A&P Group described the importance of Falmouth docks to the economy of Cornwall. These matters were not in dispute at the Inquiry. The CLP also recognises the importance of the maritime sector to the economy. Policy 2 seeks to generate and sustain economic activity. It states that proposals that improve conditions for business and investment in Cornwall, for example by safeguarding waterfront sites, docks and ports to provide for marine businesses, will be welcomed. The Framework states that

¹⁵ Planning Practice Guidance, reference ID 21a-004-20140306, test of *precise*

planning decisions should recognise that existing businesses wanting to develop should not have unreasonable restrictions put upon them because of changes in nearby land uses.

99. I have concluded above that the appeal scheme is likely to experience a significant adverse effect from Falmouth docks due to noise. It is therefore likely that complaints would be received from the new residents. Any potential regulatory action would be directed towards the person causing the noise. A&P Group explained that this would often be the operator of an individual ship rather than the operator of the docks. The appellant argued that the person complained against could mount a defence of Best Practicable Means. Whilst that may be so, the potential for such a defence does not avoid the risk of economic harm.
100. It is quite possible that either the docks or ship operators might have to amend their working practices to some extent as a result of complaints. This could include changes to hours of working. Moreover, operators may take the view that the potential for complaints and regulatory action is in itself a disincentive to use Falmouth. A&P Group pointed out that ships coming to Falmouth for refit or repair works could have that work done elsewhere. If business conditions at Falmouth become more difficult (from the perspective of the marine sector) then an element of work which would otherwise have come here could be lost.
101. The appellant also argued that the risk of complaints is already present because of existing residential development in the vicinity of the docks. There is some force to that point because there are numerous properties which may already be affected and there is a record of dock-related noise complaints. On the other hand, I have concluded above that account should be taken of the potential for increased dock-related activity, particularly in areas which will potentially have a greater impact on the appeal site. Moreover, I consider that future occupiers of the appeal scheme would be sensitive to the noise environment because of the numerous balconies and roof terraces which are a feature of the scheme.
102. On balance, I consider that the appeal scheme would materially increase the risk of limitations being placed on commercial activities within Falmouth docks.

Falmouth Sewage Treatment Works

103. I have concluded above that the impact of odour from FSTW would render the site unsuitable for the appeal scheme in the absence of odour abatement and that it would not be appropriate to impose a condition seeking a scheme of abatement. If the appeal scheme were implemented it seems likely that there would be complaints to SWW about odour.
104. In those circumstances SWW may or may not be able to mount a defence of Best Practicable Means. However, whatever happens in the short term, it is not disputed that SWW will need to increase the capacity of FSTW in order to meet the needs of an increasing population. It is not yet known what those works might be. Nevertheless, it appears to me that the presence of housing at the appeal site, in such close proximity to the FSTW, is likely to require tighter environmental standards being applied. This is likely to increase the

costs (capital and revenue) to SWW which would ultimately be borne by SWW's customers.

Conclusion on the third main issue

105. I conclude that the proposal would result in an unacceptable risk of economic harm. This would be due to the potential for restrictions on commercial activities at Falmouth docks and due also to the likelihood of additional constraints affecting the future expansion of FSTW. The proposal is not consistent with the Framework insofar as it would amount to an unreasonable restriction on existing businesses as a result of land use change. Moreover, it would not improve conditions for business and investment in Cornwall and would not therefore be welcomed under CLP Policy C2.

The nature and extent of any economic, social and/or environmental benefits

Environmental benefits

106. The appellant argued that the remediation of the site should be regarded as a very significant public benefit of the appeal scheme¹⁶. This is because oil emanating from the site enters the waters of the Fal Estuary. The Fal and Helford Estuary is a Special Area of Conservation (SAC). The boundary of the SAC is 5 to 50m from the sea wall around the site. The intervening area is an inter-tidal rock platform with some shingle and sand. The key sub-feature of the SAC closest to the site is Kelp Forest. The waters adjacent to the appeal site also form part of the Falmouth Bay to St Austell Special Protection Area (SPA). The qualifying features of the SPA include three sea bird species.
107. The oil storage tanks were constructed in the 1940s. They have not been used since 2014 and the last tank was largely emptied of residual product in 2015. Following pollution of the foreshore in the 1990s remediation works were carried out in 1999/2000. These works included the construction of a cut-off wall formed of bentonite and cement slurry between the tanks and the sea wall. The amount of oil on the foreshore subsequently started to increase and further investigations were carried out in 2009/10. It was concluded that the cut-off wall had been compromised by a combination of erosion at the base of the sea wall and exceptionally low groundwater levels¹⁷. There was then some further intervention including use of a recovery system to remove oil from behind the sea wall. By 2012 the oil seepage had been brought under control.
108. The Council and the appellant agree that there are uncertainties about the volume of contamination present and at what level it will continue to emanate from the site. They also agree that *'the option of doing nothing to remediate the site is not realistic because the in-ground barrier has a finite life which will, in due course, require action'*¹⁸. It is further agreed that the cost of remediation would be significant (£2.4 to £3.7 million) and that there is no realistic prospect of it being funded by public sector grants¹⁹. The appeal scheme offers an opportunity for the tanks to be removed and the land

¹⁶ Inspector's note – the Council's planning witness agreed that this would be a 'significant benefit'

¹⁷ There is no suggestion that the sea wall itself is likely to fail – the proposition is that the ground water level behind the sea wall fluctuates with the rise and fall of the tide

¹⁸ Statement of common ground, paragraph 14

¹⁹ Various options for securing remediation were considered and assessed as not feasible/viable in the Option Appraisal Update attached to the statement of common ground

remediated, resulting in a permanent solution to the current risk to the SAC/SPA.

109. No party at the Inquiry disputed that the removal of a source of oil pollution would be beneficial. However, Spiral argued that the degree of that benefit had been overstated. There are a number of factors to take into account when considering this point.
110. First, there is no evidence that the current level of harm to the SAC/SPA is significant. The appellant's ecology witness described it as a '*continuing low level contamination*' of the tidal waters which are a supporting feature of the SAC and SPA. She also commented that the potential for adverse effects on the kelp itself is likely to be minimal²⁰. This was consistent with the evidence presented by Spiral's marine environmental consultant who pointed out that the amount of oil leaking is small and concentrated close to the sea wall. Most of the direct impact would therefore be outside the SAC with only small, indirect and diffuse impacts on the seabed features of the designated area.
111. Second, the amount of oil remaining is unknown. What is known is that the tanks have not been used since 2014 and the last one was drained in 2015. Thus it is unlikely that much oil has leaked from the tanks since that time. Borehole surveys carried out in 2017 indicate that the remaining oil contamination is localised. Just 3 of more than 20 boreholes were found to have significant amounts of oil present²¹. These were all at the eastern end of the site, although even in this area there were boreholes where oil was not found.
112. Third, there is no evidence of any material increase in the level of oil seepage over the last 5 years. This point was made by Spiral's witness and was not disputed.
113. Fourth, the potential risk to the SAC/SPA (as described by the appellant) is predicated on an anticipated failure of the bentonite wall. I have no reason to doubt the appellant's evidence that the expected design life of the bentonite wall was 20 years at the time it was installed. Nevertheless, the evidence speaks of a gradual breakdown of containment integrity rather than a sudden or catastrophic failure.
114. One further aspect to consider is that there would be enforcement powers available under the Environmental Protection Act 1990 in the event that a significant risk was to emerge. Any such powers would of course have to be exercised in a reasonable way. They could not require more to be done than was found to be necessary to address the identified risks. Nevertheless, decision makers in the planning sphere are entitled to assume that other regulatory regimes will operate effectively should the need arise.
115. Drawing these strands together, it seems to me that the risks to the SAC/SPA, and hence the public benefit of removing that risk, have been overstated by the appellant and by the Council. It is possible that the rate of seepage will increase in the future but, if it does, it seems unlikely that this would be in a sudden or catastrophic way. If seepage were to increase I see

²⁰ Proof of evidence of Catriona Neil, paragraphs 6.6 and 6.13

²¹ Inspector's note – in answer to my questions, Mr Higgins stated that boreholes 4, 14 and 15 were found to have 130mm to 225mm of oil (see plan of borehole locations at appendix A of Mr Higgins' proof)

no reason why the situation could not be brought back under control with further interventions on a localised scale.

116. I conclude that the remediation of the appeal site (and associated reduction of risk to the SAC/SPA) should be regarded as an environmental benefit to which no more than moderate weight should be attached.

Social benefits

117. The proposal would contribute 35 units to the supply of market housing in Cornwall. The Council is able to demonstrate a 5 year supply of housing land as required by the Framework. Even so, given the general imperative to boost the supply of housing, this should be regarded as a social benefit. Moreover, the Agreement would provide for a financial contribution to the delivery of affordable housing elsewhere in Falmouth. This would be equivalent to 40% provision within the scheme. There is a pressing need for affordable housing in Falmouth. I therefore attach significant weight to the delivery of housing, including affordable housing.

Economic benefits

118. The proposal would generate employment during the construction phase. There would also be a modest number of jobs on site during the operational phase and the new residents would contribute to expenditure in the local economy. These would be economic benefits to which some weight should be attached. On the other hand, I have concluded that the proposal would result in an unacceptable risk of economic harm due to the potential for restrictions on commercial activities at Falmouth docks and due also to the likelihood of additional constraints affecting the future expansion of FSTW.
119. Falmouth docks are an important contributor to the economy of Cornwall. FSTW is a key public utility. Moreover, if the costs of expanding the facility were to be increased by the need to meet higher environmental standards, that is an economic cost which would be borne by the many customers of SWW. My overall assessment is that these potential economic harms would outweigh the economic benefits of the scheme. Economic considerations are not therefore favourable to the appeal.

Other matters

Biodiversity

120. The appeal site is not subject to any nature conservation designations. However, it is close to the SAC and SPA. It is also close to the Lower Fal and Helford Intertidal Site of Special Scientific Interest (SSSI). An ecological impact assessment was submitted with the application and the Council has carried out a Habitats Regulations Assessment. There is the potential for harm to the protected sites during the construction phase, due to escape of contaminants from the site. However, this risk could be mitigated by appropriate construction measures which could be secured by a planning condition.
121. There could also be increased recreational pressures on the SAC/SPA. The Agreement would make provision for an appropriate contribution to the management of water-based recreation, thereby mitigating this impact. Neither the Council nor Natural England objects to the proposal in relation to

impacts on the designated sites. I conclude that the proposal would not be likely to have an adverse effect on the SAC or the SPA. Nor would it be likely to harm the SSSI.

122. Ecological surveys were submitted with the application. As noted above, some additional information was submitted during the Inquiry. The surveys identified the presence of Common Pipistrelle bat, together with small numbers of other bat species²². Bat activity was confined to foraging and night roosting. Spiral argued that the bat surveys (which dated from 2014) were out of date. However, I accept the advice of the appellant's ecologist that it is unlikely that there has been a significant change in bat activity in this location. I also note that the initial reports did not take account of the widening of the access track.
123. Nevertheless, the proposed landscape design includes mitigation for impacts on foraging bats. The ecological reports also recommended measures to control external lighting. Subject to appropriate mitigation, which could be secured by conditions, I do not consider that there would be a significant adverse effect on bats. I have also noted the presence of slowworm on site. Measures could be taken to avoid harm to slowworm during construction.
124. During the site visit I saw some holes or burrows in the grounds of The Cottage. They may be a badger sett, although no ecological survey has been carried out here. The ecological surveys submitted with the application did not identify any badger activity within the appeal site itself. Even if these burrows did prove to be an active sett, there is no reason to think that the appeal scheme would result in significant harm to badgers.

Landscape and scheme design

125. The site is not subject to any landscape designations. The nearest part of the Cornwall South Coast Central Area of Outstanding Natural Beauty (AONB) is about 700m to the north east, within the Fal Estuary. The AONB includes St Mawes and the Roseland peninsula. The LVIA concluded that there would be no direct landscape impact on the AONB. I see no reason to disagree.
126. The Cornwall and Isles of Scilly Landscape Character Study identifies the site as being within the *Fal Ria, Truro and Falmouth* character area. The LVIA concluded that, after 15 years, the appeal scheme would have only a minor impact on landscape character. It was suggested that this could be a beneficial effect in that the proposal could provide an additional built/natural interface. I agree that the effect would be minor but do not agree that it would be beneficial. I have concluded above that the appeal site appears as part of the headland. It is visually distinct from the industrial character zone, the easternmost extent of which is defined by FSTW. Although it is a man-made feature, this is not strongly apparent in most views. The appeal scheme would introduce an urban form of development into the headland character zone.
127. That said, I have acknowledged that the design incorporates features intended to assimilate the scheme into its surroundings. The officer's report considered that the proposal would represent good design. I agree and in this respect find no conflict with CLP Policy 2 insofar as the policy requires all

²² All UK bats are protected species

development to ensure that the design of development is of high quality. However, I do not agree with the appellant's suggestion that the design should be counted amongst the public benefits of the scheme. To my mind the good design exhibited by the appeal proposal is no more than is needed to accord with the CLP and to avoid significant harm to the *Fal Ria, Truro and Falmouth* landscape character area.

Highways

128. Local residents were concerned about the capacity of the single track access and Castle Drive to provide safe access. The application was accompanied by a transport assessment (TA) which set out the anticipated traffic generation from the scheme and the impact this would have on the local highway network. The plans show how appropriate visibility splays could be created at the junction of the access drive with Castle Drive. The findings of the TA were accepted by the highway authority. Although the access drive is single track, I note that it would be provided with passing places.
129. The Agreement would provide funding for pedestrian/cycle improvements within the local highway network. It would also secure the provision of electric car charging points within the scheme. These obligations would mitigate the impact of the appeal scheme on the highway network and would help to ensure that the scheme takes up the opportunities for sustainable modes of travel. I conclude that the proposal incorporates adequate mitigation for highways and transport impacts and that the residual impacts would not be severe.

Education

130. The Agreement would provide for a financial contribution to primary education, thereby mitigating the impact of the scheme in this regard.

Effect on living conditions of occupiers of The Cottage

131. Spiral was concerned that the appeal scheme would give rise to overlooking and disturbance from noise and light pollution. However, I consider that there would be sufficient separation between the new buildings and The Cottage to avoid a level of overlooking that would be harmful. There would be a small parking area associated with the reception building but most of the parking associated with the appeal scheme would be underground. There would be additional traffic using the access drive, which is shared with The Cottage. However, there is some separation between the drive and The Cottage. I do not consider that the additional noise or light from traffic using the drive or the small surface car park would be such as to be harmful to living conditions.

Temporary events at The Cottage

132. Spiral argued that the proposals could impose a constraint on outdoor music events which take place at The Cottage. Such events take place under Temporary Event Notices issued by the Council under the Licensing Act 2003. It is possible that the presence of residential development at the appeal site could cause the Council to amend the terms of any approvals which may be given in future. That said, the total number of events held per year is small. I do not consider that this is a factor which should carry significant weight in this appeal.

Hazardous substances

133. WFS is concerned that residential development at the appeal site could affect the future operations of its oil storage facility at Falmouth docks, particularly if there are changes in the regulations which prescribe safe distances from such installations. However, neither the Council nor the Health and Safety Executive have raised any objection on these grounds. There is no evidence that the prospect of changes to the regulations is a factor which should attract significant weight in this appeal.

Conclusion on other matters

134. The matters discussed in this section of my decision do not add significantly to the case for or against the appeal.

Conclusions

135. I have concluded that the proposal would result in harm to the significance of heritage assets. Both CLP Policy 24 and the Framework (paragraph 134) require such harm to be balanced against the public benefits of the proposal. Although the wording of Policy 24 differs from the Framework, for the purposes of this appeal I consider that the balancing exercise is essentially the same.
136. There would be harm to the significance of PPF SM due to development in its setting. Within the broad spectrum of *less than substantial harm*, I consider that the harm resulting from the appeal proposal would be towards the upper end of the scale. Very great weight should be attached to this level of harm. The public benefits that I have identified are:
- the delivery of housing (including affordable housing) to which I attach significant weight
 - the remediation of the appeal site (including removing risks to the SAC and SPA) to which I attach moderate weight
 - economic benefits (employment and additional spending in the local economy) to which I attach some weight
137. To my mind the public benefits do not outweigh the harm to the significance of the heritage asset. The harm is not justified by public benefits and consequently the proposal is contrary to Policy 24 of the CLP and the Framework, insofar as it relates to the historic environment. I reach the same conclusion when Pendennis Castle and the Barrack Block are considered as individual listed buildings. The level of harm and the benefits are the same²³.
138. There would be harm to the significance of St Mawes Castle (SM and listed building) due to development in its setting. Within the broad spectrum of *less than substantial harm*, I consider that the harm resulting from the appeal proposal would be moderate harm. Considerable importance and weight should be attached to this level of harm. The public benefits that I have identified are the same as those set out above. They do not outweigh the harm to the significance of the heritage asset. The harm is not justified by

²³ I note that the Barrack Block is Grade II listed, whereas the Castle is Grade I. This does not change the outcome of the balancing exercise.

public benefits and consequently the proposal is contrary to Policy 24 of the CLP and the Framework in this respect as well.

139. I have identified lower levels of harm to the significance of Little Dennis Blockhouse and FCA. Whilst I attach considerable importance and weight to these harms, I consider that if these heritage assets were considered in isolation the harm to them would be outweighed by the public benefits. That said, the proposal must be considered in the round. When that is done, it is contrary to Policy 24 of the CLP and the Framework.

The development plan

140. The appeal scheme would not provide satisfactory living conditions for future residents, either in respect of odour or in respect of noise. It would conflict with Policies 12 and 13 of the CLP which together seek to avoid adverse impacts from noise and odour. It would also be contrary to CLP Policy 16 which seeks to improve the wellbeing of Cornwall's residents. It would be contrary to Policy 24, as discussed above. Moreover, it would not improve conditions for business and investment in Cornwall and would not therefore be welcomed under CLP Policy C2.
141. The proposal would accord with some other policies of the CLP, for example those relating to design and transport. Nevertheless, the conflicts I have identified are of sufficient importance that the scheme should be regarded as being in conflict with the development plan as a whole. It is therefore necessary to consider whether there are any other considerations that indicate a decision other than in accordance with the development plan.

Other considerations

142. The proposal would bring social benefits, due to the delivery of housing (including affordable housing), environmental benefits (the remediation of the appeal site, including removing risks to the SAC and SPA) and some economic benefits. I have set out above the weight that I attach to those matters.
143. The Framework can be a relevant consideration. However, in this case the proposal is contrary to those policies of the Framework that relate to the historic environment. Moreover, the proposal is not consistent with the Framework insofar as it would amount to an unreasonable restriction on existing businesses as a result of land use change. Whilst there would be some social, environmental and economic benefits, the policies in the Framework, (when taken as a whole), do not weigh in favour of the appeal.
144. My overall assessment is that there are no other considerations which indicate that the appeal should be determined other than in accordance with the development plan. The appeal should therefore be dismissed.

David Prentis

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ben Curnow	Solicitor to Cornwall Council
He called	
Mark Hitchens	Environmental Protection Officer, Cornwall Council
BSc (Hons) Dip ANC	
Nina Paternoster	Senior Development Officer (Historic Environment), Cornwall Council
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James Holman	Principal Development Office, Cornwall Council
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FOR THE APPELLANT:

Michael Bedford	Queen's Counsel, instructed by Mr Scoot
He called	
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Jonathan Smith	Director of Built Heritage, CgMs
BA(Hons) MA PGCE	
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Mark Scoot	Planning consultant
PGDip MRTPI MRICS	

INTERESTED PERSONS:

<i>Historic England:</i>	
Simon Hickman	Principal Inspector of Historic Buildings and Areas, Historic England

<i>Spiral Collective Housing Co-operative:</i>	
Verena van den Berg	Resident
Hollie Nicholls	Planning Manager, Laurence Associates
MSc MRTPI	
Jef Smith	Resident
HND Field Archaeology	

Miles Hoskin	Marine environmental consultant
PhD (Marine Biology) MCIEEM	
Maddalena Vierbuchen	Ecologist

A&P Group:

Drystan Jones	Port Operations Director
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South West Water:

Alison Langmead	Property and Planning In-house Counsel, South West Water
Peter Kelland	Area Manager, South West Water

Local resident:

Nigel Rimmer

DOCUMENTS SUBMITTED AT THE INQUIRY

Documents submitted by the appellant

APP1	Opening statement
APP2	Corrections to Mr Barlow's proof of evidence
APP3	Technical note responding to representations on acoustics
APP4	Article about Deephams Sewage Treatment Works
APP5	EPS Group information sheet on GRP tank covers
APP6	Corrections to Ms Neil's proof of evidence
APP7	Note on nature conservation value of woodland
APP8	Note on the requirement for additional bat surveys
APP9	Tree retention/removal plan (LL-228-P-004)
APP10	Access road section AA (LL-228-SK-001)
APP11	Access road section BB (LL-228-SK-002)
APP12	Note responding to arboricultural comments (Mr Scott-Ellis)
APP13	Note responding to heritage comments (CgMs)
APP14	Note regarding heritage aspects of access (CgMs)
APP15	Suggested odour abatement condition
APP16	Letter from Dr Hoskin (March 2006)
APP17	Tree removal schedule (original application)
APP18	Revised tree removal schedule
APP19	Council response to comments on Site Allocations Plan
APP20	Email from highways officer regarding access works
APP21	Suggested noise condition
APP22	<i>Skelmersdale Limited Partnership v West Lancashire Borough Council</i> [2016] EWCA Civ 1260
APP23	Closing submissions
APP24	<i>Richard Hackett Pugh v Secretary of State for Communities and Local Government</i> [2015] EWHC 3 (Admin)

Documents submitted by the Council

LPA1	Appearances
LPA2	Opening statement
LPA3	Cornwall Local Plan extract (Policy 5)
LPA4	Plan of Falmouth Conservation Area
LPA5	St Mawes Ferry Timetable

LPA6	Note on heritage impacts of access works
LPA7	Note on revised evidence on tree retention/removal
LPA8	Suggested tree protection condition
LPA9	Suggested lighting condition
LPA10	Response to Inspector's questions about the affordable housing obligation
LPA11	Closing submissions

Documents agreed by the Council and the appellant

ID1	S106 Agreement dated 19 January 2018
ID2	Statement of common ground
ID3	Schedule of plans

Documents submitted by other parties

OP1	Petition submitted by Spiral
OP2	Statement by Laurence Associates
OP3	Statement of Jef Smith
OP4	Statement of Maddalena Vierbuchen
OP5	The Cornwall Maritime Strategy
OP6	The Cornwall Maritime Strategy (Annex)
OP7	Plan of Falmouth docks
OP8	Aerial photograph
OP9	Email from Jeremy Platt of 22 January 2018
OP10	Extract from Site Allocations Plan
OP11	National Policy Statement for Ports
OP12	Plan showing <i>Seajacks Scylla</i> on northern arm
OP13	Information sheet for <i>Seajacks Scylla</i>
OP14	World Fuel Services letter of 9 September 2016
OP15	Application for LEP investment
OP16	Information sheet for Cornwall Marine Enterprise Zone
OP17	Plan of Cornwall Marine Enterprise Zone
OP18	<i>10 Opportunities</i> (Cornwall Local Enterprise Partnership)
OP19	Appeal Decision – Falmouth Wharf (APP/D0840/A/13/2207797)
OP20	Email from Drystan Jones of 6 December 2017
OP21	Email from Penny Phillips of 11 January 2018
OP22	Email from Ian Douglas of 21 January 2018
OP23	South West Water title plan
OP24	South West Water asset information
OP25	Further statement of Jef Smith
OP26	Photographs of foreshore by Dr Hoskin (on disk)
OP27	Note from Simon Hickman (Historic England)
OP28	Technical note on acoustics from A&P Group
OP29	Further statement from Laurence Associates
OP30	Further statement from Dr Hoskin
OP31	Second further statement from Jef Smith
OP32	Further statement from Maddalena Vierbuchen
OP33	South West Water ownership boundary
OP34	Email from South West Water of 26 November 2015
OP35	Petition – resubmitted with additional signatures