



Appeal Decisions

Site visit made on 28 May 2025

by **Tom Bristow BA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th July 2025

Appeal A Ref: APP/D0840/W/25/3363284

Porthleven Harbour, Commercial Road TR13 9JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant outline planning permission.
 - The appeal is made by Joanna Sharp on behalf of the Porthleven Harbour & Dock Company against the decision of Cornwall Council.
 - The application is ref. PA24/01935.
 - The development is described on the application form as the 'siting of 20ft shipping container on Fisherman's Quay for the sale of locally caught seafood and associated food and drinks'.
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Appeal B Ref: APP/D0840/Y/25/3363285

Porthleven Harbour, Commercial Road TR13 9JB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA') against a refusal to grant listed building consent.
 - The appeal is made by Joanna Sharp on behalf of the Porthleven Harbour & Dock Company against the decision of Cornwall Council.
 - The application is ref. PA24/01936.
 - The works are described on the application form as the 'siting of 20ft shipping container on Fisherman's Quay for the sale of locally caught seafood and associated food and drinks'.
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Decision

1. The appeals are dismissed.

Preliminary matters

The nature of the scheme

2. The appeal site is of 2 parts. It is principally a rectangular parcel of land of some 36 square metres at the inner western breakwater, jetty, pier or wharf at Porthleven Harbour (also referred to as Fisherman's Quay or Breageside). The scheme is for the siting of a shipping container adapted for the sale of goods,¹ with a seating area by it abutting the road for picnic benches (timber tables with attached benches). The appeal site includes a second smaller square of land at Breageside hosting a mobile toilet between 2 stone buildings. Those buildings, annotated on the plans before me as an icehouse and store, are signed as operated by the Porthleven Fisherman's Association and South West Water respectively.
3. The appeal site is owned by the appellant, the Porthleven Harbour & Dock Company. They have evidently entered into an arrangement with the site operator Daniel Gilbert, 'Dan Dan the Lobster Man', to allow for such use. Whilst private legal arrangements are generally distinct from public planning matters, they are nonetheless of some relevance in this instance. I will return to that point.

¹ Plan no. PL01 appearing to show only a standard shipping container rather than reflecting that which is present.

4. Curiously, given that the appellant's Design and Access Statement of 5 March 2024 shows the scheme in place, the application form of 8 March 2024 states that the development had not already been started then. At the time of my site visit the business was operational; permission and consent are therefore sought retrospectively. For clarity, however, I have based my assessment of the scheme relative to what is shown in associated plans and supporting documentation (and therefore, for brevity, referred to it as the 'scheme' or 'proposal' in this decision).
5. The appellant notes that Council officers recommended for approval applications ref. PA24/01935 and PA24/01936, and that committee members' views appeared to be influenced by local political concerns. Those points, however, go little further than explaining how part of the planning system operates. Members are elected representatives who are not bound to accept the recommendations of officers. In any event section 79(1) of the 1990 Act enables me to deal with an application as if made to me in the first instance.

Development

6. Section 55(1) of the 1990 Act, of relevance to appeal A, initially defines development as the 'carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land'. In terms of use, Porthleven Harbour is, and ever was, characterised by activity, footfall and trade. In that context, the use that the scheme would enable, or enable to continue, is compatible with its surroundings; the Council's decision notices in respect of applications ref. PA24/01935 and PA24/01936 are framed squarely in terms of the visual implications of the scheme.
7. There is a body of case law concerning whether a proposal would represent operational development. Physically the shipping container and seating are not insubstantial alterations to what was previously an open area (which it appears was previously used for storage or manoeuvring of boats and other items). The shipping container is connected to electricity, drainage and water services rather than entirely self-contained. Whilst there is no clear information before me as to whether or how the shipping container is, or would be, fixed to the Quay, the scheme was initially advanced as a permanent installation.
8. There is, however, some nuance to that. Although each proposal must be determined on its merits, the appeals before me follow application ref. PA23/05509 and PA23/05510. Those are explained in the associated officer report to have been withdrawn in order to enable the appellant to address the concerns of the Environment Agency and the Porthleven Fishermen and Boat Owners' Association.
9. The latter maintain an objection to the scheme, notably on the grounds of interference with what are said to be historic and legal rights to access and use Breageside. By contrast, the Environment Agency no longer object to the scheme subject to it being secured as temporary for 5 years, at which point an updated flood risk assessment is said to be required, and to the business operating only seasonally (in that the shipping container and all other elements of the scheme would be removed from the site between 15 October and 15 March each year).²

² Comments of 17 December 2024 reproduced at paragraph 17 of the associated planning officer's report.

10. Although there is no mention of such in the description of development, the appellant appears to accept a 5 year lifespan in the event that is necessary to make the scheme acceptable. In respect of seasonality, however, the appellant explains that 'given the size of the container and the logistical challenges involved in its removal and storage, it would be unfeasible to relocate the container elsewhere in the locality for part of the year'. It therefore appears that the Environment Agency's objection to the scheme has not been fully addressed.
11. Insofar as development in planning terms is concerned, however, given the foregoing and even if the scheme would theoretically only exist for a 5 year period, it is nonetheless reasonable to assess the scheme as for operational development. That relocating the installation on a seasonal basis would be unfeasible reinforces that position. Neither main party has argued that the scheme does not represent development.

Works

12. Section 7 of the LBCA, of relevance to appeal B, sets out that listed building consent is needed for 'any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest'. The appeal site is atop grade II listed 'Harbour walls including east and west wharfs, inner jetties and main pier' (hereafter the 'harbour walls' or the 'listed building').³ The appellant explains that the site forms part of the harbour walls.
13. The scheme would inherently result in an alteration to the listed building. In commenting on the scheme at appeal, a third party makes reference to the installation of wiring, plumbing and concreting in association with the scheme. Paragraph 2.4 of the appellant's statement of case includes the observation that local tradespeople were used when electricity, drainage and water were installed. It therefore appears that some works, albeit of undefined extent and potentially with no meaningful effect on historic fabric, have been undertaken to the listed building itself. As in relation to development with reference to section 55(1) of the 1990 Act, neither main party has argued that listed building consent is not required.

Statutory and policy context

14. Various statutory duties apply in my determination of this appeal. The appeal site is within, or relates to, various interrelated heritage assets intertwined with their landscape and seascape context. As above, the site is atop listed harbour walls. There are various other listed buildings dotted about the Harbour, which falls within the Porthleven Conservation Area ('PCA'). The PCA is part of the Cornwall National Landscape or Area of Outstanding Natural Beauty ('AONB'). I have therefore approached the appeal in the context of sections 16(2), 66(1) and 72(1) of the LBCA, and section 85 of the Countryside and Rights of Way Act 2000 as amended.
15. More broadly, each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended). The

³ List entry no. 1208936, shaded purple on the plan beneath paragraph 2.2 of the Council's statement of case. I note that in other coastal locations listed walls are limited to those elements rather than including wharfs, jetties and piers as here.

development plan here includes policies of the Local Plan Strategic Policies 2010-2030 (adopted in 2016, the 'LPSP'), of the Porthleven Neighbourhood Development Plan (made as part of the development plan in 2021, the 'NDP') and of the Climate Emergency Development Plan Document (adopted 2023).

16. I have also taken account of all relevant material considerations in determining the appeal, including the National Planning Policy Framework (published 7 February 2025, the 'NPPF'), the Planning Practice Guidance ('PPG'), the Porthleven Conservation Area Appraisal and Management Strategy (published 2010, the 'CAA'), the AONB Management Plan 2022-2027 (published May 2022), the Cornwall Landscape Character Assessment (published 2023, the 'LCA'), and the Cornwall Design Guide (adopted December 2021).

Main issue

17. The main issue is the effect of the scheme in respect of historic significance.

Reasons

Special interest and significance

18. Albeit with medieval roots, the present nature of Porthleven Harbour traces its origins principally to the nineteenth century. The Harbour was established between 1811 and 1825, with a more sheltered inner element built around 1855 to 1858. Breageside, the name of which is a legacy from historic Parish boundaries, forms part of the latter phase. Whilst functional, the Harbour walls, wharfs, jetties and piers are imposing feats of engineering. They are principally built of substantial blocks of squared granite, skilfully arranged to resist coastal conditions. Whilst the Harbour has undergone some change in recent times,⁴ I saw that it nonetheless retains a strong historic integrity or coherence in the present (an attribute contributing to its popularity as a destination).
19. Historically the Harbour played a significant role in facilitating the export of copper and tin during the heyday of Cornish mining. There remains a discernible legacy of mining in the surrounding landscape, the nearest element of the Cornwall and West Devon Mining Landscape World Heritage site encompassing the coastal mine of Trewavas a relatively short distance westwards of the Harbour. Boat building and fishing were also significant historically, more so before and after minerals drew the limelight. Those industries remain elements of the local economy, notwithstanding an increasing skew towards hospitality and tourism here (the CAA noting that in 1961 there were only a dozen working boats at Porthleven).
20. Porthleven emerged not only on account of the richness of mineral resources nearby, but on account of its setting in the landscape. It is situated on the alluvial plains of a marshy valley leading to the sea towards the south-west of the Harbour. The topography here created something of a sheltered cut or bowl in the landform, the Harbour flanked by steep mylor slate hillsides to the east and west. In that context the CAA aptly notes that the Harbour 'forms a focal point for local views', views which are often naturally channelled across the quays towards the sea. The relationship of Porthleven to its surroundings also accounts for the distinction in

⁴ Noting in particular that the Porthleven Fisherman's Association's building was authorised in 2007 and 2008 via decision ref. W2/PA07/01802/LBC and W2/PA07/01784/F, as was the installation of lifting equipment nearby in 2008 via decisions ref. W2/PA08/00665/F and W2/PA08/00669/LBC.

character between the eastern and western sides of the Harbour. The former, where there are more open seaward views, is very much geared towards tourism and entertainment, the latter having a more functional or utilitarian feel.

21. Historically and visually the appeal site, Breageside, the Harbour and FCA are fundamentally interconnected with one another and their wider surroundings. Porthleven falls within the South Coast Western element of the AONB which is, in large part, characterised by its rugged coastline and the interplay of the natural environment with the legacy of historic human activity.
22. Porthleven also falls within the Mounts Bay landscape character area as in the LCA, described therein as a picturesque fishing port. Whilst the Harbour has become part of collectively memory on account of being picturesque, aesthetic or comforting, those qualities cannot be distinguished as some form of freestanding historic significance in themselves. Porthleven could not have emerged as it is were it not for historic circumstances.
23. Consequently, insofar as relevant to this appeal, special interest and significance here derives principally from the materials, form and design of the built environment authentically reflecting the practicalities of supporting the historic minerals and maritime economy. Significance is in part discernible from the built environment itself, but is thoroughly interrelated with its surrounding context. The latter both influenced the establishment and evolution of buildings and structures, and also and now contributes, in itself and in visual terms, to an understanding or appreciation of intangible historic forces.

The effect of the proposal

24. As noted above, the use to which the proposal relates is acceptable. The scheme also relates to the local fishing industry, an enduring sector of the economy. The operator explains how all the crab and lobster sold comes from the bay off Porthleven. Retail and hospitality uses are now commonplace around the Harbour; at the time of my site visit there were, for example, tables and chairs present by the Breageside South West Water facility associated with the Harbour View Café.
25. As also above, the western side of the Harbour retains more of an historic functional character. To some extent the physical elements of the scheme would reflect that Breageside has always enabled the movement and temporary storage of boats, equipment and other paraphernalia. All told, physically the scheme relates to a small part of the Harbour which is often experienced in expansive views in any event. At certain times of day in particular, the dark blue proposed finish to the shipping container would render it somewhat visually recessive in its surroundings. Were the scheme acceptable as a whole, its lifespan could be limited to 5 years via condition, as could the seasonal removal of picnic benches be secured.
26. Whilst I will return to the extent to which the scheme relates to the local fishing industry and economy, retail and hospitality uses are nonetheless more prevalent to the east of the Harbour. With the exception of seating related to the Harbour View Café, there appear to be no retail or hospitality uses at Porthleven located directly on the breakwaters, jetties, piers or wharfs other than the scheme before me. In that respect the scheme is anachronistic. Even if in existence only for 5 years, the shipping container would be an enduring feature of the built environment

for that period. By consequence its presence would diverge from the historic transient or temporary use that the appeal site formerly and historically served.

27. The shipping container is, moreover, visible from various vantage points around the Harbour.⁵ I saw that it also interferes with certain views from the adjacent road, notably looking eastwards and north-eastwards across the Harbour. It is inherently modern and of standardised engineered form. It is therefore at odds in materials and craftsmanship with the nature of its historic surroundings. In my view the dark tone and cold colour of the shipping container contrasts, rather than complements, the lighter tones and warmer palette of prevailing materials hereabout; the Harbour walls, icehouse and store and various other buildings being stone or stone faced. White or off-white facades are also somewhat characteristic of nearby buildings, likely historically lime washed (to which the nearby listed kiln may attest).

Consideration

28. For the above reasons, and setting aside that there is no clarity on any physical works which have been undertaken to the listed building directly, I cannot reason other than the proposal would detract from the historic integrity of its surroundings.⁶ It appears the appellant accepts that there would be some degree of heritage harm, as is also noted in the Council's officer report associated with the scheme.
29. It is for the decision-taker, having established that harm would result, to gauge its extent or magnitude. Given the moderating factors set out in paragraphs 24 and 25 of this decision, it is fair to categorise the harm that would result as 'less than substantial' with reference to NPPF paragraph 212, and furthermore tending towards the lower end of a spectrum within that categorisation. Logically the effect of the scheme to the listed building, to the setting of other listed buildings, and to the PCA as a whole would become increasingly limited in that order (tending towards the lowest end of a spectrum in respect of the latter).
30. NPPF paragraph 215 sets out that any less than substantial harm should be weighed against the public benefits of the proposal (including, where appropriate, securing optimum viable use). That is a balance to which I now turn, noting also that NPPF paragraph 213 sets out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

The planning balance

31. As in the banner headings above, the proposal relates to 'the sale of locally caught seafood and associated food and drinks'. There is a clear economic value to the operation in those terms in respect of bringing locally caught seafood more or less directly to market. A more direct route between catch and sale is, in all likelihood, of greater value to the fishing industry than one involving intermediate stages and transactions. The scheme would also entail associated economic benefits in respect of supply chains, and as the business may generate trade hereabouts that would not have existed in its absence.

⁵ Notably in views 8, 9 and 11 as on the 'Views, landmarks and open spaces' map at CAA page 30.

⁶ Given the interconnectedness of the site and its surroundings, the logical consequence of that finding is that there is some landscape harm in conflict with the expectations of section 85 of the Countryside and Rights of Way Act 2000 as amended.

32. In that respect the business model to which the scheme relates appears precisely aligned with the economic strategy in the LPSP,⁷ and encouragement of economic growth in the NPPF.⁸ The economic and associated social benefits of the scheme are clearly public benefits. Those were rationally accorded weight in the Council's officer report associated with application ref. PA24/01935 and PA24/01936, leading to a recommendation for approval. That report also recommended a condition that would have had the effect of limiting the business to operating as 'restaurant and takeaway only within Use Class E and *Sui Generis*...' within the terms of the Town and Country Planning (Use Classes) Order 1987 as amended.
33. That said, the foregoing condition could enable the business to be used within Use Class E or *Sui Generis* by another operator with a different business model.⁹ If the current operator's business model changed, for example being less locally focussed in respect of sourcing seafood, the use may well also remain authorised within those terms. Whilst there is nothing before me to suggest either of the foregoing scenarios is more likely than not to occur, there is nevertheless the potential for lesser benefits than articulated above to result.
34. There is furthermore nothing to establish that the employment benefits associated with the scheme are wholly dependent on it, or to gauge what greater value is derived from this scheme compared to its absence.¹⁰ There is also no evidence before me as to what extent the operation relies on sales of seafood relative to other food and drinks including alcohol. Given that authorisation is sought retrospectively, there may well be some evidence on that matter. In theory I could have accorded the benefits of the scheme greater weight had there been more detail in the evidence before me, specificity in respect of suggested conditions,¹¹ or alternatively in a planning obligation under section 106 of the 1990 Act.¹²
35. As the appellant puts it 'there are many examples of retail and hospitality outlets positioned to provide customers with an outlook across the harbour'. Whilst to some extent that counts in favour of the proposed use, it counts against the weight attributable to the public benefits. Setting aside that unauthorised development itself is potentially material, there is no justification before me as to why comparable benefits could not be achieved by virtue of the business operating at another premises near the Harbour (or, by extension, that the harm that would result from this scheme is intrinsically necessary). There is furthermore no evidence that the Porthleven Harbour & Dock Company, notwithstanding any agreement with the operator, have considered whether other land within their ownership might host the business with lesser or no heritage harm.
36. Consequently, and even if the scheme were acceptable in all other respects,¹³ I cannot accord the public benefits of the scheme more than very limited weight. They are therefore insufficient to provide clear and convincing justification relative to the harm that would result.

⁷ Notably objectives 1 and 3, noting also references to supporting the fishing industry in LPSP paragraphs 1.24 and policy 3.c).

⁸ Referenced, in particular, at paragraphs 8.a) and 85.

⁹ Notwithstanding that it could of course be argued that the primary function of the operation is to sell locally caught seafood as articulated in the description of development.

¹⁰ Noting that the onus is principally on an applicant to substantiate their case as in section 62(3) of the 1990 Act.

¹¹ Noting that PPG Reference ID: 21a-012-20140306 guides that it would not be appropriate to modify the development, via conditions, in a way that makes it substantially different from that set out in the application.

¹² Noting in a different context that farm shop sales may be governed by provisions requiring a certain percentage of stock or trade to be locally sourced.

¹³ Noting my reasoning at paragraphs 10 regarding the Environment Agency's position and in footnote 6 regarding the AONB.

37. As such I conclude that the scheme would conflict with the clear expectations of sections 16(2), 66(1) and 72(1) of the LBCA and either conflict with, or not benefit from support from, relevant provisions of LPSP policies 2, 12 and 25, of NDP policies BE1 and HE1 and of NPPF paragraphs 212, 213 and 215. In summary, amongst other things, and with different emphases, those provisions seek to ensure that all development integrates appropriately with its surroundings.

Conclusion

38. For the above reasons, having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that appeals A and B should be dismissed.

Tom Bristow

INSPECTOR