

Port Development and Lanteglos Parish Council

The neighbourhood planning group is seeking to understand development within the parish and in particular that which relates to the harbour authority. This document pulls together the many acts, guidelines etc that affect development for ports. It is not completely comprehensive and all information included here is freely available on the internet.

Fowey Harbour Commission owns two major sites within the Parish: Brazen Island and Penmarlam. FHC has indicated that it will seek to develop both of these and wishes to expand Penmarlam. No further details were given of the form this might take. Note: FHC also own a car park and small plot of land on the corner of St Saviours Hill and Battery Lane, Polruan. No mention was made of this or any planned developments.

Previous major development in 2014 to one site, Penmarlam, involved the erection of a very large warehouse, workshop and retail space. This resulted in the cutting down of several large structural trees, dredging out of a space for the warehouse at the top of the site. There was no prior local consultation on the plans and neighbours were unaware of the scale and scope of the work until it began. Significant local protests from residents and neighbours resulted in the warehouse being re-sited in a slightly less prominent position. Questions were asked about planning permission and the Harbourmaster distributed his letter to the Planning authorities. The letter to the Planning Department of Cornwall Council dated 26th of November 2014 (attached in Appendix D) FHC notified the council of work to be undertaken at Penmarlam under the provisions of the Town and Country Planning (General Permitted Development) Order 1995. An estimate of the size of the warehouse was given and it was described as ‘being constructed for the purposes of shipping (in conjunction with the Commissioners’ ship repair business).’

1. Permitted Development

The legislation quoted in the letter referred to Schedule 2, Part 17, Class B Town and Country Planning (General Permitted Development) Order 1995’
<http://www.legislation.gov.uk/ukxi/1995/418/schedule/2/made>

This act includes many permitted development rights and they include permission for householders as well as businesses. For example, the considerable earthworks, ditch digging etc. in fields in Lombard is for ground source heating. The section relating to ports is given here in Appendix A. The letter and the act also refer to ‘statutory undertakers’ and ‘operational land’.

<https://www.legislation.gov.uk/ukpga/1990/8/contents?commentary-c14028561>
Town and Country Planning Act 1990
Section 262 Meaning of “statutory undertakers”.

(1) Subject to the following provisions of this section, in this Act “statutory undertakers” means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator (within the meaning of Part V of the M1 Airports Act 1986).

Section 263 Meaning of “operational land”.

(1) Subject to the following provisions of this section and to section 264, in this Act “operational land” means, in relation to statutory undertakers—

(a) land which is used for the purpose of carrying on their undertaking; and

(b) land in which an interest is held for that purpose.

(2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.

Question 1: Does a commercial marine repair business and boat storage qualify as 'shipping' or 'ship repair'?

2. Government Policy on Ports

The following documents refer mainly to large ports but all are consistent that full and open consultation is required with all stakeholders.

2.1 Planning and Port Infrastructure Projects

National Policy Statement for Ports (Presented to Parliament pursuant to section 5 (9) of the Planning Act 2008) January 2012

This is the national framework for port expansion and demonstrates government requirements for port development.

Much of this relates to the handling of tonnage as the government is keen to expand the capacity of ports in the UK. Some key points are listed below.

- The section 3.3 on government policy reports is that development should be sustainable and 'provide high standards of protection for the natural environment'. P 11.
- Criteria for good design should be 'sensitive to place'. It is also recommended that professional independent advice is sought on the good design of a proposal. Pp 25-26.
- Statutory nuisance complaints pp 31 the local authority's responsibility to investigate.
- Consideration should be given to the impact on biodiversity and geological conservation. P 34
- In reference to ancient woodland and veteran trees aged or veteran trees outside ancient woodland their loss should be avoided. P 37
- Development proposals should include opportunities for building in beneficial biodiversity. P 37 opportunities should be taken to enhance existing habitats and where practicable to create new habitats of value within the site landscaping proposals.' P 38
- Landscape and visual impacts and in particular those in tourist destinations and important areas for recreation. Landscape and visual assessment report should be carried out. P 62 this should include potential impacts on views and visual amenity and any light pollution effects. P 62
- Development proposed within nationally designated areas. 'the conservation of the natural beauty of the landscape and countryside should be given substantial weight deciding on applications for development consent in these areas.' P 63 the assessment should include the need for the development and the cost and scope for developing elsewhere outside the designated area and any detrimental effect on the environment landscape and recreational opportunities and the extent to which that could be moderated. P 63.
- Visual impacts 'coastal areas are particularly vulnerable to visual intrusion because of the potential high visibility of development on the foreshore on the skyline and affecting views along stretches of undeveloped coast. P 64. Minimising impact includes landscaping and the material and design of buildings and filling in gaps in tree and hedge lines to mitigate the impact when viewed from more distant point. P 64.

Question 2: While this is aimed at large ports the implications/standards surely should be followed by smaller ports?

3. Trust Ports and Consultation

A concern of Lanteglos by Fowey Parish Council is to ensure that future developments involve full consultation. Trust ports are in a monopoly position granted by Act of Parliament. They are required to consult fully with stakeholders about future plans.

3.1 Relevant documents

3.1.1 Harbours, Docks Piers and Ferries (The Fowey Revision) Order 2001

This the legal framework under which the port is governed and includes the requirement for stakeholder representation..

3.1.2 Modernising Trust Ports (Second Edition 2009)

Guidance on good governance from the Department for Transport. It sets the benchmarks which apply 'whatever the size, turnover or type of port.' Core principles of openness accountability and fitness for purpose.'

The section on the role of stakeholders and consultation:

- requires the Board to create a 'culture of transparency and effective communication.' Stakeholders are encouraged to challenge the board where they believe performance has fallen short.
- 'Trust ports should ensure that there is an effective, continuing dialogue with the local authorities in its immediate hinterland. Communications should ensure that the local communities are informed and onside.'
- 'As a minimum all trust ports should hold a widely and effectively advertised open annual meeting and where practical and appropriate other meetings as required to discuss significant matters of interest to their stakeholders.'
- All trust ports should produce an annual strategy document. Section 2.3 compliance trust ports do all they can to comply with the guidance annually as part of their report trust ports should detail in full their compliance with the guidance and where they have not been able to comply explain their reasons.'

This guidance is regularly reviewed:

Trust Port Study: Key Findings and Recommendations Department for Transport May 2016
A general review of how trust ports complied with the guidance. It sent a survey to all ports but FHC did not respond.

Consultation on Draft Ports Good Governance Guidance Sept 2017 Department for Transport
The consultation repeats much of what was in MTP version 2 and includes a proposal for a clear complaints procedure. This was sent out to consultees in the industry but not to stakeholder or user groups.

Fowey Estuary Management Plan (Fowey Estuary Partnership 2012)

The Fowey Estuary Management Plan is the product of work undertaken to pull together all interested parties and it contains guidelines 'to inform, advise and guide current and future management. It is not a statutory plan and has not been designed to dictate detailed management actions or set up complex new working arrangements. Instead it builds upon the successes and strengths of existing organisations and activities by providing a framework within which decisions can be made and actions can be taken.'

Its stated vision is that the

‘Fowey Estuary is valued and appreciated as a place to live, work & relax, an environmental asset and a focus for activities in the local area. The Partnership seeks to:

Stimulate an appropriate balance between competing demands placed on the Fowey Estuary, through shared information, cooperation and action

Create a culture of openness and communication

Work towards a sustainable future for the Fowey Estuary

In direct relation to the work of the Neighbourhood plan, the FEMP provides Guiding Principles in the following areas

Section 6. Landscape Conservation :

To protect and where possible enhance the unique natural beauty and distinctive landscape quality of the Fowey Estuary for future generations, and to promote the conservation of the area’s natural assets by raising awareness of all estuary users of the value of those assets.

Section 8 Historic Assets

To ensure the protection, promotion and understanding of the historic and cultural resource of the Fowey estuary and to promote careful evaluation of any proposals for development that may affect them.

Section 9. Commercial Activities

To sustain the commercial viability of the Port of Fowey and to encourage efforts to ensure that all development proposals balance the economic and environmental needs of the estuary.

Section 14. Tourism, Recreation and Interpretation

To ensure that the needs of the visitor are integrated with the needs of the community, and the development and promotion of recreation and tourism is achieved whilst sustaining the natural environment.

Section 15. Access

To maintain and extend the accessibility of the estuary for all, where possible, without compromising the nature and landscape conservation interests

The Fowey Estuary Partnership no longer seems to be active. It was led by the Fowey Harbour Commission and the plan was due to be updated in 2017. There was at one time a separate website (www.foweyestuary.org.uk) but this link now redirects to the Fowey Harbour Commission’s website.

Recommendation: The Parish Council presses for greater transparency and consultation on plans and enquires about their commitment to and the current status of the Fowey Estuary Partnership and whether the FEMP is to be reviewed..

4. Other Relevant Organisations

While central government is specific on the need for good consultation, other bodies also have an input on port developments.

4.1 Historic England

Ports and the Historic Environment (Historic England Report 2014)

A survey of ports in relation to heritage assets. The definition of heritage assets is :
building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are valued components of the historic environment. They include designated heritage assets and assets identified by the local planning authority during the process of decision-making or through the plan making process

This survey for Historic England looked at a sample of ports including Plymouth. It found that in Plymouth there was a specific port of Plymouth Marine liaison committee. And the Tamar Estuaries Consultative Forum had a management plan for delivering a sustainably managed estuary and coast and all marine planning applications were considered by the forum.'

4.2 Area of Outstanding Natural Beauty (AONB)

Penmarlam is sited within an AONB. The following is taken from their website page on planning

<http://www.cornwall-aonb.gov.uk/planning/>

AONB and Planning:

'Planning is the responsibility of Cornwall Council who have a duty of regard to the purposes of the AONB. The Cornwall AONB Partnership provides advice to Cornwall Council on AONB planning matters

At present planning involvement is prioritised on the basis of the following two categories: major planning applications and other significant applications as defined below:

- Development that would conflict with or prejudice the implementation of the AONB Management Plan and
- Development of land which would, by reason of its scale or nature or the location of the land, is of major importance/ significance in the context of its impact on the protected landscape.

The Cornwall AONB Unit is also working closely with a number of AONB Parishes on their Neighbourhood Plans, assisting them to develop landscape related evidence bases and assisting with policy development.

AONB Planning Development Vision makes two key points:

- Planning policies and an implementation framework that protects and enhances landscape character, attaching appropriate weight to the Area of Outstanding Natural Beauty whilst encouraging appropriate forms of social and economic development.
- High quality development which is in the right place and of the right scale, which is in harmony with the protected landscape; absence of intrusive tall structures and incongruous development. A tranquil place for quiet enjoyment with dark night skies.

Recommendation

The assistance of the AONB should be requested for the Neighbourhood plan.

4.3 Cornwall Council

An important aspect of the act on permitted development is the power of the local planning authority within certain protected areas and permitted development right can be withdrawn..

The following is the guidance from the government sponsored on-line Planning Portal regarding permitted development.

https://www.planningportal.co.uk/info/200187/your_responsibilities/37/planning_permission/2

Permitted Development Rights withdrawn

You should also note that the local planning authority may have removed some of your permitted development rights by issuing an 'Article 4' direction. This will mean that you have to submit a planning application for work which normally does not need one.

Article 4 directions are made when the character of an area of acknowledged importance would be threatened. They are most common in conservation areas. You will probably know if your property is affected by such a direction, but you can check with the local planning authority if you are not sure.

You can perform certain types of work without needing to apply for planning permission. These are called "permitted development rights".

They derive from a general planning permission granted not by the local authority but by Parliament. Bear in mind that the permitted development rights which apply to many common projects for houses do not apply to flats, maisonettes or other buildings. Similarly, commercial properties have different permitted development rights to dwellings.

In some areas of the country, known generally as 'designated areas', permitted development rights are more restricted. For example, if you live in:

- a Conservation Area
- a National Park
- an Area of Outstanding Natural Beauty
- a World Heritage Site or
- the Norfolk or Suffolk Broads,

Recommendation: The Parish Council write as follows to the Planning Department

In developing our Neighbourhood plan we are seeking to understand the potential impact of permitted development rights within the parish. The Town and Country Planning (General Permitted Development) Order 2015 Schedule 1, Part 1 – Article 2 (3) Land refers to AONB. Can you advise us on whether permitted development is restricted within the AONB and in what way?

5. General Concerns:

5.1 FHC and the local economy.

It could be argued that the expansion of Penmarlam boat repair, storage and chandlery is helping the local economy. FHC has a monopoly position in the harbour and is required to be careful of overusing its position. The 2014 expansion of Penmarlam is diversification by the port authorities and took over existing business with engineer and his apprentice.

Their diversification and expansion is related to small engine repair, chandlery and boat storage, all of which are in direct competition with several existing facilities: St Winnow Boats, Fowey Harbour Marine Engineers, OSM, Lostwithiel, Black Dog Marine, Looe . Chandlers, Upper Deck Marine, Fowey, Toms Boatyard, Fowey boatyard

Other business cannot claim permitted development in expansion and so are disadvantaged. Neither can these mainly very small businesses benefit, as FHC does, from cross subsidized from harbor dues and other income.

A concern is the increasing use of the facilities at Penmarlam, with added pontoons and continued reduction in the tree cover and increased lighting.

5.2 FHC and Ship Repair

Brazen Island is FHC's designated ship repair facility. The workshop there repairs and maintains the vessels belonging to FHC and also undertakes other small works. This is an aging and underutilized existing industrial structure which needs investment. FHC has not made any significant investment in this facility for many years.

Note: Upper Fowey and Pont Pill were designated as Marine Conservation zones by the Dept for Environment in November 2013.

Appendix A Town and Country Planning (General Permitted Development) Order 1995

Relevant parts of 1995 act relating to ports.

Schedule 2, Part 17, Class B Town and Country Planning (General Permitted Development) Order 1995

PART 17 DEVELOPMENT BY STATUTORY UNDERTAKERS

Class B Dock, pier, harbour, water transport, canal or inland navigation undertakings

B. Permitted development

Development on operational land by statutory undertakers or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

(a)for the purposes of shipping, or

(b) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.

B.1 Development not permitted

Development is not permitted by Class B if it consists of or includes—

(a)the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic,

(b)the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—

(i)an educational building, or

(ii)a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation.

B.2 Interpretation of Class B

For the purposes of Class B, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected, and the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964(7) (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc. of harbours), and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945(8).

Class D Dredgings

D. Permitted development

The use of any land by statutory undertakers in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings for the spreading of any dredged material.

Appendix B : Town and Country Planning (General Permitted Development) Order 2015
Schedule 2

<http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/made><http://www.legislation.gov.uk/ukxi/2015/596/schedule/2/made>

This is the latest version of the act and the wording does not appear to have changed for ports. This is now in Schedule 2, Part 8 Town and Country Planning (General Permitted Development) Order 2015

Class B – dock, pier, harbour, water transport, canal or inland navigation undertakings
Permitted development

B. Development on operational land by statutory undertakers or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

(a)for the purposes of shipping, or

(b)in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking.

Development not permitted

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

(a)the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic; or

(b)the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—

(i)an educational building, or

(ii)a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation.

Interpretation of Class B

B.2 For the purposes of Class B—

(a)references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected, and

(b)the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964 (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc., of harbours)(28), and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945(29).

Class D – dredging by transport undertakings
Permitted development

D. The use of any land by statutory undertakers in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings for the spreading of any dredged material.

Class E – development for the aid of shipping
Permitted development

E. Development required for the purposes of the functions of a general or local lighthouse authority under the Merchant Shipping Act 1995(31) and any other statutory provision made with respect to a local lighthouse authority, or in the exercise by a local lighthouse authority of rights, powers or duties acquired by usage prior to the 1995 Act.

Development not permitted

E.1 Development is not permitted by Class E if it consists of or includes the erection of offices, or the reconstruction or alteration of offices where their design or external appearance would be materially affected

**Appendix C : Schedule 1 Town and Country Planning (General Permitted Development)
Order 2015**

PART 1 Article 2(3) land

1. Land within—

(a) an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas);

(b) an area of outstanding natural beauty;

(c) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981 (enhancement and protection of the natural beauty and amenity of the countryside)(1);

(d) the Broads;

(e) a National Park; and

(f) a World Heritage Site.

Appendix D

Planning Department
Cornwall Council
County Hall
Truro
Cornwall
TR1 3AY

26 November 2014

Dear Sirs

In my capacity as Harbour Master and Chief Executive of Fowey Harbour I write to advise the Council on behalf of Fowey Harbour Commissioners (the "Commissioners") of our intention, to carry out works to build a warehouse in part of our boatyard at Penmarlam.

We are proposing to carry out the works to construct the warehouse under the permitted development rights available pursuant to Schedule 2 Part 17 Class B of The Town and County Planning (General Permitted Development Order) 1995 (the "GDPO") in our capacity as a statutory undertaker for the purposes of Section 262 (1) of the Town and Country Planning Act 1990 (the "Act").

The exact dimensions of the warehouse are yet to be determined, but it is currently expected to be approximately 30m x 16m by 7m (eaves). The warehouse is being constructed for the purposes of 'shipping' (in connection with the Commissioners' ship repair business). The land on which the warehouse will be situated is 'operational' for the purposes of Section 263 of the Act which states that operational land is land:

- a) which is used for the purpose of carrying on their undertaking; and
- b) land in which an interest is held for that purpose.

The boatyard is adjacent to the main harbour and the land was purchased by the Commissioners for the benefit of the harbour and ancillary operations. It has been used by the Commissioners since its purchase in April 2001 to dry dock and store vessels, for vessel launching and recovery and for the carrying out of ship repairs as part of the harbour undertaking.

We trust that this is sufficient notice for the Council of the works to be carried out however, please do not hesitate to contact me should you have any additional queries.

Yours faithfully

Paul Thomas
Harbour Master and Chief Executive of Fowey Harbour