



# Appeal Decisions

Inquiry held on 2 - 23 March 2010

Site visit made on 4 March 2010

by **Colin Tyrrell MA(Oxon) CEng MICE**  
**FCIHT**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**1 April 2010**

---

## **Appeal A Ref: APP/N1160/A/09/2114798** **Baylys Road, Oreston, Plymouth PL9 7NQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Captain Nigel Boston against the decision of Plymouth City Council.
- The application Ref 08/02268/OUT, dated 19 December 2008, was refused by notice dated 16 April 2009.
- The development proposed is an outline application for residential use, the introduction of A3/A2/B1 floorspace, the erection of a water taxi pontoon and the erection of new buildings for the existing GEOSA Oceanographic business that currently operates from the site.

---

## **Appeal B Ref: APP/N1160/A/09/2116843** **Baylys Road, Oreston, Plymouth PL9 7NQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Captain Nigel Boston against the decision of Plymouth City Council.
- The application Ref 09/01060/OUT, dated 23 August 2009, was refused by notice dated 13 November 2009.
- The development proposed is an outline application for the erection of new buildings for the existing GEOSA Oceanographic business that currently operates from the site and related marine sciences, research and development, training and educational floorspace, the erection of a water taxi pontoon and residential development.

---

## **Application for Costs**

1. At the Inquiry an application for costs was made by the appellant against Plymouth City Council. This application is the subject of a separate Decision.

## **Decisions**

2. The appeals are both dismissed.

## **Procedural Matters**

3. Both appeals are against refusal of outline planning permission, with all matters reserved. The illustrative details accompanying Appeal A includes 118 residential units, a hostel/hotel, a café/restaurant, office and laboratory space for the existing occupier (GEOSA Ltd), and a water-taxi pontoon. Appeal B, on a slightly smaller site, has illustrative details which include 96 residential units, a marine sciences block, the offices and laboratory space for GEOSA Ltd, and the water-taxi pontoon with a small associated café.
-

4. It was not possible to complete the Inquiry within the allocated three days of sitting, although I heard all the evidence and cross-examination in that time. With my agreement, the advocates on both sides submitted their closing submissions in writing and the Inquiry was finally closed, also in writing, on 23 March 2010.

### **Main Issues**

5. The main issues are whether the site should be reserved wholly or mainly for marine related employment and whether the development of the site as envisaged in the applications would result in an increase in vehicular movements giving rise to prejudice to public safety and convenience or to interference with the free flow of traffic.

### **Reasons**

#### *Marine Employment- History*

6. The appellant related the history of the site, which is not significantly disputed by the Council. Until about sixty years ago, the site was ideally served for marine use as a timber yard, with its own railway connection and adequate seaward access, especially for the smaller shipping in use at the time. After the removal of the railway in the 1950s, and the refusal (confirmed on appeal in 1988) of planning permission for an improved highway link, only the existing highway access remains to the site. This access was apparently never planned as a primary route for heavy vehicles, and consists of an indirect network of narrow residential roads and commercial roads without consistent parking restriction. At Plymstock Road (West) there are a few local shops, where the absence of footways further reduces the adequacy of the route as an access to a marine employment site of any size.
7. With the passage of time and the silting of the Cattewater Channel, much of the timber processed on the site arrived and was distributed by road. However, as no improvements could be made to the access, the operation of the timber business became impractical and ceased in the early 1990s.
8. The site was then acquired by the present owner, and has been used partly by GEOSA Ltd in connection with its oceanographic research, education and ancillary work and partly as a boat yard. The boat yard has now closed because of competition from better-located and more-economic facilities. Although the north berth at the dock is adequate for the particular requirements of GEOSA Ltd and its specialist ship the *Terschelling*, it has very limited application for more general maritime use because of its small size and because it dries out at low tide.
9. The west berth, which was last used for a timber ship in 1991, is not suitable for current commercial use. In addition to the large cost of dredging, the cost of repairs to the sea wall adjacent to the west berth is estimated at about £2m. The Cattewater Harbour Master has confirmed to the City Council that it would now be uneconomic to dredge the channel approaching the dock for continued large-scale maritime use, though he acknowledges that a degree of marine activity is still possible [LPA/2].

*Marine Employment – Policy*

10. The site (including what is now the Old Wharf Road housing and together referred to as the Bayly Bartlett site) was suggested in the Hooe Lake Planning Study (HLPS) of 1993 as appropriate for residential use [CD 3.34]. The Council disputed in the Inquiry whether this document should be read as formal policy, and its stance is supported by paragraph 1.6 of the study, which states that the study provides detailed planning guidance supplementary to the provisions of the structure and local plans. However, I note that the Planning Committee minutes of 11 March 1993 resolved that it should be approved as formal policy of the City Council [CD 3.33, minutes paragraph 252]. Furthermore, paragraph 5.5 of the HLPS reaffirms its status as policy, stating that “The policy statement below indicates the Council’s specific requirements in respect of proposals for this site.”
11. This policy statement, which is presented in upper case in the manner normally reserved for such specific policy within planning documents, as distinct from the lower case of supporting text, includes the words:

*THE COUNCIL WILL CONSIDER A CHANGE OF USE AND/OR  
DEVELOPMENT PROPOSALS FOR THE BAYLY BARTLETT SITE HAVING  
REGARD TO THE FOLLOWING PROVISIONS AND AIMS:*

*(1) DEVELOPMENT FOR RESIDENTIAL PURPOSES IS ACCEPTABLE IN  
PRINCIPLE*

*(2) THE SCALE OF DEVELOPMENT TO BE SUCH THAT THERE IS A  
MATERIAL IMPROVEMENT OF TRAFFIC CONDITIONS IN THE LOCALITY*

*(4) BAYLYS ROAD TO BE IMPROVED AS FAR AS POSSIBLE TO THE  
FULL STANDARD OF THE HIGHWAY AUTHORITY*

*(8) SAFEGUARD LAND ADJACENT TO WHARF FOR POTENTIAL FUTURE  
WATER-RELATED USES*
12. The Council’s Local Development Scheme, adopted in April 2009 [LPA/15] confirms that the HLPS is saved until replaced sometime in the future. Although the earlier 1996 Local Plan (the ADLP) has expired and is no longer a material consideration for planning purposes, it dealt specifically with the Bayly Bartlett site, confirming the majority of the site as a location for residential development and anticipating a total of 70 dwellings [CD 3.1 page 62].
13. The Council prepared a further early draft local plan in December 2001, the First Deposit Local Plan (the FDLP), but this was put into abeyance before it could proceed to inquiry. Although the appellant’s view is that its contents have no relevance to these appeals, the Council’s Local Development Scheme [LPA/15 page 36] states that while its *policies* are no longer a material consideration its *proposals* will remain relevant until formally abandoned or superseded (my italics).
14. The FDLP dealt with the appeal site only as part of the Proposals Map, showing it divided into two parts [CD 3.2 Proposals Map 44]. The smaller part (including the existing house on the site) is tinted according to the key as

- “Established Residential Areas (Policy 26)”, but the main part is chequered according to the key as “Marine Employment Areas (Policy 3)”. Policy 26 allows further residential development subject to certain criteria, but Policy 3 restricts development to marine-related uses only or uses which directly support development of the marine sector.
15. The proposals for the site in the FDLP clearly refer to its policies, and I find it confusing that the proposals are stated by the Council to be relevant though the policies are not. I therefore look elsewhere for guidance for the appeal site.
16. The current statutory development plan for Plymouth does not include any site-specific policy for the appeal site. The adopted Core Strategy does however have a general policy relating to the development for alternative purposes of sites with existing employment uses [CD 2.4 Policy CS05]. Such alternative uses will be permitted where there are clear environmental, regeneration and sustainable community benefits. In making an assessment of these benefits, the Council is required to assess:
- 1) whether the proposal would result in the loss of a viable employment site;
  - 2) whether the site is in an appropriate location for the needs of the city’s priority economic sectors;
  - 3) whether the loss of the use would harm the city’s tourist or visitor trade;
  - 4) in relation to marine employment sites, that priority will be given to safeguarding the site for marine industrial uses that genuinely require a waterfront location;
  - 5) whether there is a good range of employment opportunities local to the site.
17. At the Inquiry, the Council witnesses agreed that there would be an environmental benefit from the potential reduction in HGV traffic that a change of site use from mainly marine employment uses to mainly residential use would bring. They also agreed that the site is in a sustainable location for residential development, being close to the village centre of Oreston.
18. There is little evidence that the Council’s officers carried out the assessment required of the five factors in Policy CS05 before reporting to the Planning Committee for either appeal. Only factor 4) was quoted in the Officers’ reports, and little attempt was made to deal with the other aspects in the supporting text.
19. During the Inquiry, I heard from the Council’s Economic Development Officer that he had received 11 enquires for marine industries and waterside locations in a period of 46 months (under three a year). When questioned about possible uses for a site such as the appeal site, with poor indirect road access and only silted approaches from the sea, he could only suggest small-scale uses such as sail making, sail repairs, chandlers, outboard engine sale and repairs, and start-up operations such as a “man with a van” which would need only basic facilities.

20. He agreed he had no basis for disagreeing with the report carried out for the appellant by agents Stratton Creber [CD 9.1 page 8]. This found that demand for marine use of the appeal site was sparse since most modern marine engineering was undertaken in industrial estate locations with good transport links. It also noted that the value of the buildings for continued use was limited by the site's tertiary location, its poor HGV access, the poor quality of the buildings themselves and the extent and quality of alternative sites.
21. Criterion 4 of Policy CS05 only applies to marine *industrial* uses that *genuinely* require a waterfront location (my italics). I do not consider that any of the uses suggested by the Council can be so described, and the witness was unable to help me as to the significance of the word *genuinely* in the Council's policy. He suggested that, regardless of the lack of current demand for such industrial uses genuinely requiring a waterfront location, the site should be safeguarded against the potential eventuality of such demand arising.
22. The viability of the site for such marine industrial uses was not checked by the Council until just before the Inquiry, when their own marine adviser confirmed that the site would be uneconomic to dredge even though a degree of marine activity would be possible [LPA/2]. Such incidental marine activity does not, in my view, accord with the expectation of Core Strategy CS05 of "marine industrial uses that genuinely require a waterfront location."

*Marine Employment – Conclusion*

23. The Council's stance in relation to marine employment at the appeal site seems to me to be unreasonable, and I conclude that in relation to the assessment of criterion 4) of Policy CS05 the site should not be assessed as inappropriate for alternative use. Furthermore, I consider that the Council should have carried out a balanced assessment of all five criteria, and not just rejected the application on criterion 4).
24. From what I heard at the Inquiry, it seemed to me that the site is not a viable employment site (except for the specialist operations of GEOSA Ltd), as would be protected by criterion 1), and is not in an appropriate location because of the access difficulties, as would be protected by criterion 2). Criterion 3) relating to tourist use does not apply to the site, and only criterion 5), the protection of local employment, seems to be relevant to the site.
25. The only significant employment currently on the site is in connection with the operations of GEOSA Ltd, and provision would be made in both appeal proposals for the continued and extended operation of the company. Indeed, Appeal B would allow a four-fold increase in the area of operation of the company. Overall, the appeal proposals offer a third/two-thirds split of land use, with one third for employment and two-thirds residential.
26. In respect of the Core Strategy, I conclude that when the five criteria of Policy CS05 are assessed together, as the policy requires, and its permissive nature is taken into account, the alternative proposals would accord with the requirements of the policy.
27. The Core Strategy is the main document of the statutory development plan referred to by the Council. I can also give some weight to the HLPS, as it remains a current document, though its formal status is not entirely clear. It

allows for residential development in principle, but only if there is a resultant improvement in traffic conditions in the locality (Criterion 2) and if Baylys road is improved as far as possible (Criterion 4). Neither appeal would achieve an improvement in *existing* traffic conditions (despite some *potential* reduction in HGV usage), though the short length of Baylys Road has already, as far as I could see, been improved as part of the Old Wharf development. The safeguarding of land adjacent to the wharf (Criterion 8) has been achieved for the north wharf, which would remain available for use by GEOSA, while the west wharf now has very limited economic use, as confirmed by the Council's marine adviser.

28. As regards the ADLP and the FDLP, I find little help from either document. The ADLP is wholly superseded (though its research base may still be helpful in the absence of any other site-specific research) while the policies in the FDLP are no longer relevant despite the proposals referring to the policies. The ADLP would conditionally allocate the extended site (including the now-existing Old Wharf development) to residential development and the FDLP would reserve most of the net appeal site as a marine employment area. In relation to any weight I can give these documents, I consider that they effectively cancel each other out in regards to the future development of the appeal site.
29. Overall, I conclude that I should take full account of the Core Strategy as part of the development plan and accord considerable weight to the HLPS, both of which would allow the principle of residential development of the site.

#### *Highway Conditions – History*

30. As with the principle of marine employment, I need to consider the history of the site, which was not disputed by the parties. Ever since the site lost its railway connection, access has been constrained by the poor highway access. The link from Baylys Road to Plymstock Road, known as Orchard Crescent, was built in the 1930s to avoid the previous tortuous route via Park Lane and Marine Road. However, subsequent development of housing without off-street parking along this road, together with the inevitable on-street parking which has followed, has resulted in a road which is effectively only one lane wide and is very difficult for use by HGVs.
31. A planning application for a bypass route directly into the site along the by-then-disused railway was made in 1986, but was refused and subsequently dismissed on appeal in 1988. Although the Inspector for that appeal acknowledged that existing conditions along the access route via Orchard Crescent were far from satisfactory, he concluded that the benefits of the new route would not be great and would not outweigh the very considerable harm from its construction and from the traffic that would result [CD 5.1].
32. Planning permission for the Old Wharf residential development (originally for fifty dwellings but later built as fifty-one dwellings) on the Langshill Quarry part of the Bayly Bartlett site was granted in December 1995 [CD 5.2]. At the same time, planning permission for the rest of the site was granted for the current commercial/marine uses subject to various conditions [CD 5.3], including No 3 which required that the development should take place in accordance with the details as submitted on 3 August 1994 [LPA/6 Appendix 5 + LPA/13] as

amended by additional information in the letter and plan from Murray Jones and Marshall of 18 July 1995 [APP/7].

33. The document of 3 August 1994 provisionally agreed to a level of traffic for the combined sites of no greater than that which the original Bayly Bartlett timber business generated, as apparently based on a survey carried out in 1986. This is stated to be equivalent to some 70 houses for the combined site, or 20 houses equivalent for the residual site after the assumed 50 for the Old Wharf development. It states that this corresponds to 100-120 vehicle movements per day, and the schedule in section 4 sets out how the various elements of the appeal site would generate an estimated 115 daily traffic movements and require 69 parking spaces.
34. Although the subsequent letter of 18 July 1995 provided further or amended information about the proposed use for each building, no additional traffic generation information was provided. It does not, to my mind, supersede the detailed traffic generation information provided for each element of the appeal site the previous year. The original information was only agreed provisionally by the appellant in 1994, but I have seen no evidence of any increased or changed figures until the current applications were prepared.

#### *Highway Conditions – Current*

35. Both the Council and the appellant now rely on TRICS trip generation figures to estimate both existing and future traffic levels. Both traffic witnesses, however, agreed that the TRICS figures are based on generic industrial estates in various remote parts of the country, and were not related to the specific marine employment situation at the appeal site. It seems to me to be illogical to prefer the data from such generic use to the particular forecasts for the appeal site by its owner and future operator, even if the estimate was made 16 years ago in support of a planning application.
36. I heard much about how the modern approach to highway design of minor roads, as presented in Manual for Streets (MfS), would allow increased traffic flows along the minor roads in Oreston. However, the approach in MfS is primarily focussed on lightly-trafficked residential streets, and deals in detail more with the design of new roads. I am not persuaded that this approach can necessarily be applied to the congested roads of Oreston, which have resulted more from historical accident than any coherent planning.
37. MfS and its supporting research recognise that congested roads are not necessarily unsafe roads, in so far as when traffic speeds are reduced sufficiently then the risk of accidents is also reduced. I heard insufficient evidence to judge whether additional traffic through Oreston would result in additional accidents, though I acknowledge that the perception of danger to residents would be likely to increase with the level of traffic.
38. I do not argue that the historical approach of only allowing the equivalent of 70 houses-worth of traffic generation should be rigidly applied to the combined Old Wharf and appeal site. It may well be that, with the demise of the “predict and provide” approach to road design, today’s expectations of highway conditions are such that some modest increase in overall traffic generation should be permitted notwithstanding that it may result in some increase in congestion of the surrounding streets. However, I do argue that the

development on the site should to some degree be constrained by the standard of its approach roads.

39. The density of development of both appeals amounts to around 40 dwellings per developable hectare of land allocated to residential use. This seems to me to be approaching the limit of what could be reasonably expected for such a non-urban site, and to take no account of the highway access constraints. The 1993 HLPS specific policy for the Bayly Bartlett site required that any redevelopment/change of use should have regard to the aim of a material improvement of traffic conditions in the locality [CD3.34 paragraph 5.6(2)]. The 1995 planning permission controlled the uses of the site [CD 5.3 condition 3] and development otherwise permitted on the site [CD 5.3 condition 2] for the stated reason "that the traffic generation occasioned by the use of the site is kept within limits which the highway network in the vicinity can support without undue congestion or danger to other highway users".
40. The major concerns from local residents and from the councillor for the area are the problems that would result from extra traffic on the approach road network. It seems to me that a level of development such as that now proposed in both appeals, unfettered by the historic controls to limit congestion on the approach road network, would not support convenient traffic movement, as required by Core Strategy Policy CS28, or provide for a satisfactory access, as required by Core Strategy Policy CS34. I conclude that in this respect the proposals in both appeals would fail to accord with the development plan.

#### *Other Considerations*

41. Both proposals include a pontoon and waiting facilities for a water taxi or ferry connecting to the city centre. The appellant produced an expression of interest [APP/11] from an existing operator who agreed to offer a reliable scheduled service to the proposed pontoon. This would be an off-shoot of the established ferry between Mount Batten and the Barbican.
42. Without funding for improved facilities for GEOSA Ltd at Oreston, there is a possibility that the company would relocate to alternative existing facilities in Aberdeen, resulting in a loss of employment in the local area. However, I saw no detailed viability assessment as to whether the new facilities for GEOSA Ltd and a pontoon for the water taxi could not be funded from fewer dwellings on the rest of the site resulting in fewer generated trips on the approach roads.
43. There were some additional reasons for refusal given by the Council in response to Appeal A. In the opinion of the Council these have been generally overcome by the issue of the appellant's unilateral undertaking [APP/12B], although the Council has some non-fundamental disagreements with details of the wording [LPA/18].
44. The Council has provided an "evidence document" [LPA/17] with details of how the tariff amounts sought for the various elements of community infrastructure in the unilateral undertaking are assessed. This document covers the whole of the city, with averaged figures, and in my opinion it does not provide the functional or geographical link between the development and the item being provided as part of the developer's contribution as required by ODPM Circular 05/2005 paragraph B8. Nor is there a clear audit trail between the contribution sought and the infrastructure to be provided as required by ODPM Circular



05/2005 paragraph B21. In these respects the Unilateral Undertaking and the Council's evidence document do not follow government guidance, and I can give their contents little weight except to note that the outcome is generally satisfactory to the Council in respect of the items it covers.

45. Local residents have some concerns about use of the site by helicopters and the construction of a slipway, but these are not matters before me at this Inquiry.

*Overall Decisions*

46. I have taken into account all other matters raised at the Inquiry, but none is of sufficient substance to outweigh the main considerations which have led me to my decisions.
47. I am not persuaded that the site should be reserved wholly or mainly for marine related employment or that the current proposals would be contrary to Core Strategy Policy CS05. A more efficient use of the land would accord with government guidance. However, I consider that the development of the site as envisaged in the applications would result in a substantial increase in vehicular movements giving rise to prejudice to public convenience and to interference with the free flow of traffic, and that this would outweigh the benefits which would otherwise accrue. The extra congestion would be contrary to Core Strategy Policies CS28 & CS34, and I conclude that I should dismiss both appeals on these grounds.

*Colin Tyrrell*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Celina Colquhoun of counsel She called Mr Robert Crocker	Instructed by Plymouth City Solicitor  Assistant Manager (Development Control Transport), Plymouth City Council
Mr Jeffery Kenyon, MA(Hons) MTP MRTPI MIED Mr Robert Heard, BA(Hons) DipTP	Acting Head of Economic Development, Plymouth City Council Area Planning Co-ordinator, Plymouth city Council

### FOR THE APPELLANT:

Mr Nicholas Engert, solicitor and consultant to Clarke Willmott He called Captain Nigel Boston Mr Martyn Iles, BSc(Hons) CEng MICE MCIHT Mr David Seaton, BA(Hons) MRTPI	Instructed by Captain Nigel Boston  Director, GEOSA Ltd Director, Laurence Rae Associates Ltd  Partner, PCL Planning Ltd
---	---

### INTERESTED PERSONS:

Councillor Michael Leaves Mrs Susan Kowak Mrs Pat Constable	Plymstock & Radford Councillor Local Resident Local Resident
---	--

## DOCUMENTS

LPA/1	Opening Statement on behalf of Plymouth City Council
LPA/2	Letter dated 26 February 2010 from Captain Charlesworth
LPA/3	Advice from Coastal Planning Co-ordinator on 5 February 2010
LPA/4	Summary Evidence, Mr Bob Cocker
LPA/5	Proof of Evidence, Mr Bob Cocker
LPA/6	Appendices to Proof of Evidence, Mr Bob Cocker
LPA/7	Summary Evidence, Mr Jeffery Kenyon
LPA/8	Proof of Evidence, Mr Jeffery Kenyon
LPA/9	Summary Evidence, Mr Robert Heard
LPA/10	Proof of Evidence, Mr Robert Heard
LPA/11	Appendices to Proof of Evidence, Mr Robert Heard
LPA/12	Views of Mr Grant Jackson on housing (written as proof of evidence but presented as a written document)
LPA/13	Extra pages for LPA/6 Appendix 5
LPA/14	List of proposed conditions
LPA/15	Local Development Scheme adopted April 2009
LPA/16*	Planning Obligations and Affordable Housing SPD December 2008
LPA/17*	Planning Obligations and Affordable Housing SPD Evidence Document December 2009
LPA/18*	Comments on Appellant's Unilateral Undertaking of 25 February 2010
LPA/19	Closing Submissions
APP/1	Statement of Common Ground
APP/2	Opening Statement on behalf of Appellant
APP/3	Summary Evidence, Mr Martyn Iles
APP/4	Proof of Evidence, Mr Martyn Iles
APP/5	Appendices to Proof of Evidence, Mr Martyn Iles
APP/6	Schedule of details of accidents referred to by Mr Cocker
APP/7	Copy letter and plan of 18 July 1995 from Murray Jones & Marshall
APP/8	Summary Evidence, Mr David Seaton
APP/9	Proof of Evidence, Mr David Seaton
APP/10	Appendices to Proof of Evidence, Mr David Seaton
APP/11	Letter of 2 February 2010 from operator of Mount Batten Ferry Service
APP/12a	Original unilateral undertaking dated 25 February 2010
APP/12b	Amended unilateral undertaking dated 25 February 2010
APP/13	Proof of Evidence of Captain Nigel Boston
APP/14	Trip generation from 3,555m <sup>2</sup> of site as existing potential, using TRICS
APP/15	Hourly flows from 3,555m <sup>2</sup> of site as existing potential, using TRICS
APP/16	Pre-application enquiry form of 26 October 2005 and response
APP/17	Exchange of correspondence of July/August/September 2009 between PCC and Clarke Willmott relating to the handling of the applications.
APP/18*	Re-allocated
APP/19*	Re-allocated
APP/20	Appellant's costs application
APP/21	Closing submissions on behalf of Appellant

\* LPA/16, 17 & 18 were originally miss-referenced as Appellant documents