
Appeal Decision

Hearing held on 25 February and 19 May 2015

Site visits made on 18 May and 4 June 2015

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 13 October 2015

Appeal Ref: APP/W4325/W/14/3000737

Car park, Alabama Way, Birkenhead, Merseyside, CH41 5LJ

- 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 Cammell Laird Shiprepairers & Shipbuilders Ltd against the decision of Wirral Council.
 - The application Ref APP/14/00352, dated 14 March 2014, was refused by notice dated 23 July 2014.
 - The development proposed is described as 'an on-shore office and warehouse building that will serve as a marine operations and maintenance facility for off-shore projects'.
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Decision

1. The appeal is allowed and planning permission is granted for an on-shore office and warehouse building and linkspan that will serve as a marine operations and maintenance facility for off-shore projects at the car park, Alabama Way, Birkenhead, Merseyside, CH41 5LJ, in accordance with the terms of the application, Ref APP/14/00352, dated 14 March 2014, subject to the conditions in schedule A.

Procedural matters

2. In addition to the office and warehouse building, the proposal includes a pontoon in the River Mersey and a linkspan between it and the shore. Part of the development site, covering the eastern section of the slipway and the position of the pontoon and part of the associated linkspan structure, extends below the mean low water line of the River Mersey¹. This part of the site falls outside the jurisdiction of the Town and Country Planning Act 1990. The works seawards of mean high water springs², comprising the linkspan structure and pontoon, are subject to the provisions of the Marine and Coastal Access Act 2009. In accordance with that Act, an application was submitted for a licence for the construction of a pontoon and linkspan. A marine licence was granted on 18 December 2014³. As the linkspan would extend beyond above the mean low water line, planning permission is also required for this structure. Accordingly the proposed development is more clearly described as an office and warehouse building and linkspan that will serve as a marine operations and maintenance facility for off-shore projects, and I have considered the appeal on this basis.

¹ The position of the mean low water line is shown on Plan AL3.

² Mean high water springs is the average of high water heights occurring at the time of spring tides.

³ The marine licence is at Appendix 3 of the statement of common ground.

3. The Appellant submitted a series of revised plans with the appeal⁴. On the location plan submitted with the application, the red edge which is intended to denote the extent of the development site does not include the position of the pontoon, although this is included within the red edge on the proposed development site plan⁵ and the extent of the site is also shown correctly on the plan which accompanied the committee report. Revised location plans show the red edge drawn around the full extent of the site (Plans AL1 and AL2). The scheme would involve the stopping up of an area of highway: the extent of this area is shown more clearly on the plan submitted with the appeal than that submitted with the application⁶. These revised plans are referred to in the statement of common ground agreed between the Appellant and the Council.
4. Several amendments have been put forward to the original scheme. These comprise the repositioning of a personnel door on the northern elevation of the building, the removal of roof lights from the same elevation, the addition of a short length of fence adjacent to the entrance gates, the retention of existing ground levels adjacent to the sea wall (as opposed to the limited increase previously proposed), and the inclusion of areas of planting within the site. These are relatively minor changes, which would not alter the nature of the scheme, and the removal of roof lights and the identification of planting could be expected to lessen its impact. Amendments of this nature were included in a second planning application, which was also refused⁷, and in consequence they have been the subject of publicity and consultation. Information from the tree survey has also been included on relevant drawings.
5. The Council raised no objection to the revised plans. Given that they are not material in nature, have been subject to publicity, and in one case rectify a recognised error, I am satisfied that no prejudice would be caused to the interests of any parties by consideration of the revised plans, and I have dealt with the appeal on this basis.
6. The Appellant requested a screening opinion from the Council in accordance with the Town and Country Planning (Environmental Impact Assessment (EIA)) Regulations 2011. In response the Council expressed the view that the development would not give rise to likely significant effects on the environment, that the proposal was not considered to be EIA development, and that an EIA was not required⁸. The Council also explained in its screening opinion that any potential issues and impacts could be adequately addressed through the normal planning and marine licensing assessments and processes and also through the Habitats Regulations Assessment (HRA) process. I note that the Council consulted Merseyside Environmental Advisory Service on the screening request, and that the screening opinion is consistent with the consultation response. I have no reason to take a different view. The appropriateness of the screening opinion was not disputed at the hearing.

Main Issues

7. I consider that the main issues in this appeal are:

⁴ The plans submitted at appeal stage are listed in Schedule B.

⁵ The location plan and proposed development site plan accompanying the application are plans refs 170-SI-01 Rev A and 1370-SI-08 Rev A respectively.

⁶ Plans refs 1370-SI-13 Rev A and AL16 show the area of highway to be stopped-up at application and appeal stage.

⁷ Planning application ref APP/14/01585 was refused on 19 February 2015. The decision notice is Document G8.

⁸ The screening opinion is at Appendix 2 of the statement of common ground.

- i) The effect of the proposed development on the living conditions of nearby residents of Priory Wharf.
- ii) The effect of the proposed development on the operation of LDRA Ltd, the occupier of the offices to the south of the site.
- iii) The effect of the proposed development on nature conservation interests.
- iv) The effect of the proposed development on heritage assets.
- v) The suitability of the site for the development, having regard to flood risk.
- vi) The effect of other considerations on the overall planning balance.

The proposal

8. The development site comprises a short stretch of road (Alabama Way), a public car park on the west bank of the River Mersey, and the adjacent slipway. A warehouse and office building would be erected on the eastern part of the site, and a linkspan structure would provide access to a pontoon which would be positioned in the river. This development would provide a marine operations and maintenance facility for off-shore projects, and the statement of common ground makes specific mention of windfarms in Liverpool Bay and the Irish Sea. The marine licence application states that the pontoon would be provided for a minimum of 25 years, and the licence itself refers to an operational period for the pontoon of up to July 2040, with decommissioning occurring thereafter.
9. The warehouse is intended to be used for the storage of component parts for the repair and maintenance of off-shore windfarms. Damaged and worn components which are returned would for the most part be sent elsewhere for refurbishment and overhaul, with only minor electrical work taking place at Alabama Way. It is expected that, normally, two crew transfer vessels would depart from and return to the pontoon each day⁹. The Appellant has explained that for most of the year (an estimated 55% of days), the facility would operate a standard working day¹⁰, with staff arriving from 0630 hours and departing by 1900. The crew transfer vessels would leave between 0700 and 0730 hours and return between 1700 and 1800 hours. Extended working days are expected to occur for 15% of the time, when crew transfer vessels would return to the site at about 2100 hours, with the latest staff departing at about 2200. It is assumed that weather conditions will prevent vessel access to the windfarms on the remaining 30% of days (weather days). Twenty four hour operations would only be conducted in the event of emergencies (estimated to be less than once per year).

Planning policies

The Unitary Development Plan

10. The Development Plan includes the saved policies of the Wirral Unitary Development Plan (UDP). The greater part of the site (that is, excluding the slipway and the position of the linkspan structure and pontoon) is shown within a primarily industrial area on the proposals map (Document G1). In these

⁹ The number of crew transfer vessels is specified in para 4.20 of Mr Grimshaw's statement and para 3.17 of the Appellant's Noise Impact Assessment

¹⁰ A detailed explanation of the operation of the facility is given at paras 4.18-4.46 of Mr Grimshaw's statement.

areas, subject to the provisions of Policies EM6 and EM7, Policy EM8 provides for uses within classes B1, B2 or B8, and proposals for the reconstruction, extension or expansion of existing businesses. Policies EM6 and EM7 set out respectively general and environmental criteria against which proposals for new employment development should be assessed. Under Policy EM6, amongst other considerations, proposals should not lead to an unacceptable loss of amenity, have an adverse effect on the operation of neighbouring uses or compromise the future development of land in the vicinity. Policy EM7 specifies that, where the criteria of Policy EM6 are satisfied, proposals should be permitted when the benefits outweigh the disadvantages in respect of four additional matters, including the impact on any site carrying nature conservation designations.

11. The proposals map includes most of the site in the coastal zone (only part of the slipway and part of the position of the linkspan structure and pontoon are excluded). Policy CO1 refers to proposals within the developed coastal zone. Criteria in this policy include a requirement for a coastal location unless there are no alternative sites outside the coastal zone, and that there will be no adverse effect on coastal and marine nature conservation. In addition, public access to the coast is expected to be preserved. Similar requirements are included in Policy CO7 which is concerned with development in the inter-tidal zone. Planning permission should only be granted for development which would not be at risk from fluvial or tidal flooding (Policy WAT1).
12. Policy CH1 of the UDP permits development likely to affect a listed building, provided that the nature and scale of the proposal would be appropriate to retaining the character and design of the listed building and its setting, and that adequate provision is made for the preservation of its special architectural or historic features. Insofar as noise is concerned, Policy PO3 stipulates that noise from a proposal should not cause unacceptable intrusion or persistent nuisance. Policy TL1 seeks to protect urban tourist resources, including Birkenhead Priory, the urban waterfront and riverside walkways giving access to the shore and to views of the Mersey Estuary and the Liverpool skyline.

The emerging Core Strategy

13. The proposed submission draft of the Core Strategy for Wirral was published in 2012. A further version is expected to be published during 2015 prior to submission for examination. Policy CS5 of the emerging Core Strategy sets out a strategy to promote sustainable development in Settlement Area 2, which includes the maintenance and enhancement of specialist port-related employment and activities, alongside support for the manufacturing, logistics, maritime, offshore renewable energy and heavy engineering sectors at Cammell Laird, Twelve Quays and West Float, as part of a wider sub-regional super port; focussing regeneration to preserve and enhance the setting of heritage assets, including the listed buildings and scheduled ancient monument at Birkenhead Priory; and the establishment of a linked framework of green and blue infrastructure including along the coast with open views of the Liverpool waterfront.
14. Policy CS14 identifies priority sectors for development. Amongst developments which will be supported are construction and supply chain facilities for offshore wind and the low carbon economy; and high quality premises for key employment sectors including advanced technology and manufacturing, and

creative and digital industries. Criteria for employment development in Policy CS15 include provision for priority sectors or activities identified in Policy CS14 and minimising the impact on surrounding uses and protecting residential amenity. Design criteria for all new development are set out in Policy CS43. These include preserving and enhancing the setting of heritage assets; preserving the outlook, privacy, light and amenity of existing occupiers; and minimising the opportunity for noise and other disturbance to adjoining uses. As the emerging Core Strategy is at a relatively early stage in its preparation, it carries only limited weight.

Reasons

Living conditions

Relationship of the site to Priory Wharf

15. To the west and south of the appeal site are industrial and commercial premises, which are designated with the Alabama Way car park as a primarily industrial area on the UDP proposals map. The appeal site is at the northern end of this designation, beyond which is housing at Priory Wharf, identified on the proposals map as a primarily residential area. That part of Priory Wharf to the north of the site comprises blocks of apartments, which are three and four storeys in height. Whilst Policy EM8 supports B1, B2 and B8 uses within primarily industrial areas, and these uses cover the activities which would occur at the marine operations and maintenance facility, development proposals are subject to compliance with Policy EM6, which requires account to be taken of adjacent uses. The introduction of industrial activity close to housing is likely to impinge to at least some degree on the living conditions of residents. This consequence is contemplated by Policy EM6, which does not preclude any adverse effect, but requires that there should be no unacceptable loss of amenity.

Outlook

16. Two blocks of apartments at Priory Wharf are separated from the appeal site by a strip of open space within the residential development, and a footway which leads to the riverside. There is also a line of trees adjacent to the western end of the footway. The apartment blocks on this part of Priory Wharf have been built to follow the boundary of the residential development from Church Street to the west to the riverside footway to the south-east and east. The appeal site slopes down towards the waterfront from about 14m above Ordnance datum (AOD) at the junction of Alabama Way and Monks Ferry to about 6-7m AOD by the riverside wall. It is on the lower eastern part of the site that the office/ warehouse building would be erected. The slab level of 7m would not be very different from the ground level of the eastern parking area, and the warehouse, which would form the western part of the building, would be set into the rising land.
17. The nearest part of the proposed building to the dwellings at Priory Wharf would be the north-west corner: the main parties agreed that the gap here would be 24m. To the west of this point, apartments would face towards the western end of the building, and then the parking and access area. In the opposite direction the separation distance would widen, as the apartment blocks follow the line of the footway to the north-east and away from the position of the building.

18. A number of apartments at Priory Wharf have windows, balconies or ground floor terraces which provide views across the appeal site. As part of my programme of site visits I had the opportunity to visit two apartments at Priory Wharf. No 37 is a ground floor property, and No 41 is on the second and third floors of the same block. Both apartments have windows facing towards the appeal site. Due to the absence of built development, there is an open aspect from Priory Wharf across the appeal site, which, to the south-east, continues to the river. Construction of the office and warehouse would represent a clear change in the appearance of Alabama Way, and to varying degrees the new building would impinge on existing views from the apartments¹¹. However, notwithstanding tree cover on the southern side of the car park, the presence of commercial premises on that side of the appeal site is apparent from apartments facing south, with the cranes and buildings at Cammell Laird's shipyard beyond. Those apartments facing south-east have a direct view towards the river rather than the nearby industrial and business estate: whilst the proposed building would be in the foreground it would not prevent views of the river. Moreover, the proposed building would be a two-storey structure, which would be at a lower ground level than the nearest apartments. Site section A-A on Plan A11 shows the relative levels of the buildings, and the accuracy of this drawing and section B-B has not been disputed by the Council or other parties. The offices would have an overall height of about 7.3m, whilst the warehouse would have a low pitched roof with a ridge height of about 8.9m. Although the Appellant's landscape and visual impact assessment identifies that there would be a major adverse effect on six apartments, I do not share this view. From the upper two floors of Priory Wharf, views would extend above the warehouses and offices. The loss of trees on the far side of the building from Priory Wharf, and of a number on its north-west side, would not materially worsen the effect of the development, and some planting is proposed on the northern and southern boundaries. Bearing in mind the relationship between the buildings, in terms of siting and levels, I do not consider that, even from ground floor rooms or the amenity space on this side of the apartments, the development would appear overbearing or unduly prominent. There would be a moderate adverse effect on the outlook from the nearest apartments on the ground and first floors, whilst the occupants of those dwellings which would be somewhat further away or higher up would experience a minor reduction in visual amenity.

Noise

19. As part of the Appellant's noise assessment, a baseline survey was carried out. Measurements taken at monitoring locations within the site and a third to the north close to Priory Wharf¹² show little difference in background levels between daytime and night-time. Recorded daytime levels were 45-49dB_{L_{A90,T}} and 46-47dB_{L_{A90,T}} at night. Sources of noise in this location include traffic movement, people talking, activity at the dry docks to the south, and vessels in the river, with the dominant component being wave action at the river wall. The Council concurred with the approach to the baseline survey, and the data submitted was not disputed by other parties.

¹¹ Photomontages accompanying the Appellant's landscape and visual impact assessment (figures 11-18) show views from positions close to apartments at Priory Wharf.

¹² The monitoring locations are shown on figure 5.1 of the noise impact assessment.

20. The effect of noise from crew transfer vessels, loading and unloading of the vessels, and the slamming of car doors has been assessed in accordance with *British Standard BS 4142:2014 – Methods for rating and assessing industrial and commercial sound* and *BS8233:2014 – Guidance on sound insulation and noise reduction for buildings*. This approach was agreed as appropriate by the Council. The vessels would moor at the pontoon, about 80m from the river wall, and about 140m from the façade of the nearest apartment in Priory Wharf. At this distance, a specific noise level of 55dB is expected outside the nearest apartments, exceeding the lowest night-time background level by 9dB. BS4142 advises that a difference of around +5dB is likely to be an indication of an adverse impact, and of about +10dB or more an indication of a significant adverse effect, depending on the context. A simple comparison of the background and predicted noise level suggests the prospect of a significant adverse effect for residents using balconies, terraces and garden areas in the nearest part of Priory Wharf to the pontoon.
21. Insofar as the potential effect inside the apartments is concerned, I agree with the main parties that the guidance in BS8233 is of assistance in making an assessment. External noise would be reduced by the building envelope. The Appellant's noise consultant advised that, with windows open, there would be a reduction in noise levels of about 15dB, whereas the Council referred to a range of 10-15dB. Both main parties agreed that a greater reduction of 30dB could be achieved where windows are double-glazed and closed, but Priory Wharf Management Company explained that not all apartments have double-glazed windows, and in any event residents have a reasonable expectation of being able to open windows. I have, therefore, only taken a 10-15dB noise reduction into account. On this basis the noise from crew transfer vessels would fall to 40-45dB inside the dwellings, compared with guideline indoor ambient noise levels of 35dB_{L_{Aeq,16 hour}} and 40dB_{L_{Aeq,16 hour}} for resting and dining activities respectively.
22. However the movements of vessels at the pontoon would be short-term events, which would only occur in two periods of the day. Moreover, it is unlikely that there would be much use of outside amenity areas when the boats would be departing at 0700-0730 hours, and, given the passage of traffic along the Mersey, the engines and thrusters of the crew transfer vessels would not introduce a new type of noise to this riverside location. A representative of the Mersey Charter Boat Association pointed out that the pontoon could accommodate four boats and suggested that they would be held in place by continuing use of their engines rather than being moored. It is the Appellant's evidence that, under normal circumstances, two vessels would be used, and there is no contrary evidence to indicate that the servicing of off-shore projects would not operate in this way. As components would be loaded and unloaded at the pontoon, I do not doubt that the crew transfer vessels would be moored there to ensure that they remained secure during these operations, and I heard that in this position engines would be switched off or simply idling. Bearing in mind the context, as required by BS4142, I consider that there would only be limited disturbance from this noise source, which would not give rise to an unacceptable effect on the living conditions of local residents.
23. Prior to departure of the vessels and on their return to the pontoon, loading and unloading activities would take place. It is anticipated that these activities would take up to about 30 minutes on each occasion. A roller shutter door in the east side of the warehouse would face the linkspan structure, and

components would be transported to and from the vessels by an electric tractor and trailer. These movements would occur on the far side of the site from Priory Wharf, and the building itself would be positioned between the western end of the route and the apartments of local residents. Transfer between boat and trailer would be undertaken by hand or an electric arm on the pontoon. The Appellant suggested that outside office hours, the audible reversing alarm on the tractor could be switched off, with warning given by flashing beacons, and this could be the subject of a condition. These are low-key activities which would occur twice a day for short periods of time, at some distance from the apartments. In these circumstances, I consider it unlikely that noise from loading and unloading would be a source of disturbance to local residents.

24. The proposed layout of the appeal site (Plan AL5) includes parking spaces adjacent to the northern boundary: a row of spaces on the access road would be about 11-12m from the nearest block of apartments and there would be a gap of about 8-20m from the row by the slipway. As the existing use of the site is as a car park, noise from vehicle movement and, in particular, the slamming of doors occurs at the present time and is a feature of the local environment. However the operation of the facility would involve the arrival of offshore staff between about 0630 and 0700 hours, a time when I anticipate that there is little use of the public car park, and within the hours for sleep identified in BS8233¹³.
25. Thirty off-shore staff would arrive by 0700 hours. The Appellant's noise consultant has put forward 15 car door slams close to the car park boundary in a five minutes period as a worst case scenario. With the inclusion of a +3dB correction for the distinct impulses of the noise, a rating level of 48dB_{L_{Ar,5min}} has been calculated, which is only 2dB above the background level, and hence below the +5dB increase which BS4142 advises is likely to be an indication of an adverse impact. Given the individual nature of noise from car arrivals, it is also relevant to take account of maximum sound pressure levels. Although levels are not specified in B8233, this matter is addressed in the World Health Organisation (WHO) publication *Guidelines for Community Noise*. A guideline value of 60dB_{L_{Amax(fast)}} is put forward for outside bedrooms at night-time¹⁴. Taking account of a reduction of 15dB due to the building envelope with windows open, this equates to an external level of 45dB_{L_{Amax(fast)}}. The Appellant's noise impact assessment predicts maximum sound pressure levels of 67-70dB_{L_{Amax}} at Priory Wharf, reducing to 54-66dB_{L_{Amax}} if parking spaces furthest from the dwellings are used first. The WHO Guidelines advise that noise events exceeding 45dBA (internally) should be limited if possible. Referring to a report from the National Physical Laboratory and the Institute of Sound and Vibration Research, which comments that exceedances of the WHO guideline values do not necessarily imply significant noise impact¹⁵, it is argued on behalf of the Appellant that the WHO criteria can be interpreted as a very risk averse and conservative approach. Of more relevance in my judgement is the likelihood that individual noise events of car doors slamming would be closely grouped, and would occur shortly before 0700 hours, which is the end of the night-time period identified in BS8233. Whilst I consider that the noise from car doors would have an adverse effect on residential amenity in the early

¹³ Table 4 of BS8233 identifies the hours for sleeping as 2300 to 0700.

¹⁴ Table 4.1, WHO Guidelines.

¹⁵ National Physics Laboratory and The Institute of Sound and Vibration Research. Health effects based noise assessment methods: A review and feasibility study: 1988.

morning, the short duration and close grouping of these events lessen my concern, and it is a matter to which I attach moderate weight.

26. Construction work would be likely to generate certain louder noise events, but a construction management plan, which could be the subject of a condition, would provide a mechanism to monitor noise and employ less intrusive methods if appropriate. Moreover another condition could restrict construction times to prevent work taking place in the evenings, at night, on Saturday afternoons and on Sundays when local residents could reasonably expect to enjoy a quieter environment.

Other matters relating to living conditions

27. Concern was expressed about the movement of large delivery vehicles. I accept that it may be difficult to specify the size of vehicle making deliveries to the site, but servicing would take place during the normal working day, and the site abuts an established industrial and commercial area to the west and south. Vehicles would not need to travel through a residential area to reach the office and warehouse building, and there would be no conflict with criterion (i) in Policy EM7 of the UDP. Priory Wharf Management Company argued that the appeal site was used by local residents as an amenity area. That may be the case, but this is not the purpose of the land, which is currently a public car park. Amenity space specifically for the residents of Priory Wharf is provided within that development. This is not a matter which carries weight against the appeal proposal. It has been suggested that the proposal would result in a loss of sunlight in garden areas of the apartments, and that this would interfere with the human rights of children. Given the separation distance between the proposed building and the apartments, their relative levels, and the orientation of the apartment blocks (above, paras 17 & 18), I do not consider that residents of Priory Wharf would suffer any loss of daylight or sunlight as a result of the proposal, and there would be no interference with their human rights for this reason.

Conclusions on the first main issue

28. I have found that the proposal would have a moderate adverse effect on the outlook from the nearest apartments on the ground and first floors, with a minor reduction in visual amenity on respect of other apartments. Insofar as noise is concerned, I attach moderate weight to the effect of car doors slamming before 0700 hours and limited weight to that from the crew transfer vessels. To avoid the prospect of noise intrusion, a mitigation scheme, taking into account the matters set out in the Appellant's noise impact assessment could be secured by means of a condition. Although I have identified certain adverse effects, these would not be significant, and I conclude that the proposal would not result in an unacceptable loss of amenity for the residents of Priory Wharf. Consequently there would be no conflict with Policy EM6 of the UDP in this respect. There would also be compliance with criterion 10 in Policy CS43 of the emerging Core Strategy, with respect to minimising the opportunity for noise disturbance to residential neighbours. Criterion 9 of this policy specifies that the outlook of existing occupiers should be preserved by preventing overlooking or overshadowing and maintaining separation. Although there would be some effect on the outlook from certain apartments in Priory Wharf, the gap to the proposed offices and warehouse would be

adequate to prevent unacceptable harm, and there would be no conflict with the objective of this part of Policy CS43.

LDRA Ltd

The firm

29. LDRA Ltd occupies the two-storey offices immediately to the south of the appeal site as its headquarters, and I visited this building in connection with the hearing. The firm is an international software business, involved in code analysis and software testing in a variety of markets. Its customers include major national and multinational companies and agencies of the British and other governments. The building accommodates a large number of computers. LDRA has referred to the sensitivity of computer disks, and it is particularly concerned about the effect of vibration, grit and noise on its operations.

Vibration

30. LDRA has explained that modern disks are extremely sensitive to vibration: the building was not designed with computers in mind, and the floor is of a design which is susceptible to resonance. There is concern about vibration caused by the movement and engines of the crew transfer vessels. However LDRA did not dispute the Appellant's explanation that the transfer function of vibration from one media type to another is extremely low where there is a high density differential, as is the case from water to land/ rock. The Appellant's noise consultant suggested that perceived vibration is more likely to relate to the airborne transmission of noise from boat engines and thrusters, but at a distance of about 95m, he anticipated that there would be a negligible effect.
31. LDRA has operated from its existing premises since 2001. At the hearing, the managing director referred to vibration from the passage of noisy boats on the river. However he also commented that there had been no environmental problems since the firm had moved to Birkenhead, and, in response to my question, he could not identify whether there was any greater incidence of disk degradation than had occurred in the firm's previous location. This information supports the Appellant's view that there would be negligible vibration from boats using the pontoon at the appeal site. Moreover the presence of the pontoon, about 80m from the river wall, would cause vessels which at present pass at about this distance from land to go further out into the river.
32. Construction activities could potentially be a source of vibration. The break-out of the existing hardstanding and concrete walls and the excavation for foundations are identified as the most likely sources in the Appellant's construction noise and vibration assessment (Document A6). However there are different ways in which the redevelopment of the appeal site could be carried out. For example, the Appellant points out that rotary bored piling would have a lesser effect than hammer driven piling, and the predicted vibration dose value at a distance of 5m, based on BS5288-2 and BS6472-1, would indicate a low probability of adverse comment. A construction management plan, secured by condition, could include a requirement for the monitoring of vibration, with the use of less intensive methods above specified thresholds.

Grit

33. Construction activities have the potential to release dust and grit. LDRA explained that the disks have small holes to permit the equalisation of gas inside and outside the container. There is concern that grit could pass through these holes, and then cause damage to the surface of the magnetic medium of the platters which comprise the disks. I have read that the air conditioning system is designed for cooling rather than cleaning, and that the filtering in place is for coarse dust. However there is no detailed evidence to demonstrate the precise limitations of the protection afforded by the filtering equipment. The main parties, LDRA and Dr Hennell have suggested that a construction management plan condition should include methods for the control of dust and air pollution. There are techniques which could be employed to reduce the emission of dust and grit from the building works, such as cutting the existing hardstanding and walls into manageable sections which would be taken away for breaking up. On the information before me, I consider that a construction management plan, incorporating a requirement for the monitoring of airborne emissions and the adjustment of working methods if certain limits are reached, would avoid unacceptable harm from dust and grit to the operations of LDRA Ltd.

Noise

34. LDRA is concerned about the intensity of noise, particularly in the form of loud individual noise events. The distance from the pontoon to LDRA's offices is less than to Priory Wharf, and the Appellant has calculated that the noise level at the façade of the building would be 59dB_A¹⁶. Whilst this level would exceed the lowest night-time background level by 13dB, it is the effect of noise within the building which is important. The offices are double-glazed, and LDRA did not dispute that the building envelope would provide a reduction of at least 30dB. LDRA argued that the characteristics of the noise would be of more significance than audibility, and it was suggested that there would be strong bursts from the engines. I have already referred to the mooring of the boats at the pontoon (above, para 22), and secured in this way I have no reason to doubt that engine activity would be limited to idling. Whilst I anticipate that engine noise would be greater on arrival and departure, these would be brief events, occurring just twice in the morning and twice in the evening.
35. Car door slams would occur as individual noise events. I have identified an adverse effect on the living conditions of Priory Wharf residents from this noise source (above, para 25), but the parking spaces are generally set further away from LDRA's offices than from the apartments to the north, and a large proportion would be shielded to some degree by the proposed building. Moreover there are parking spaces at LDRA's own site, which would give rise to this type of noise from a close position to the offices and the computers which it accommodates. There is no specific evidence before me to indicate that loading and unloading activities using an electric tractor, and an electric arm or manpower to transfer components between the vessel and trailer would generate the loud individual noises about which LDRA is concerned. However, as previously mentioned (para 28), a mitigation scheme would avoid the prospect of noise intrusion.

¹⁶ Document A7, paragraph 3.5.

36. Activities such as piling and the break-up of the existing hardstanding and walls would be likely to generate certain louder noise events. The Appellant's construction noise and vibration assessment points out that alternative methods are available for these areas of construction work, and a construction management plan would provide the means to control noise levels during this period.

Character and appearance

37. LDRA is a high technology enterprise, and it is concerned about the character and appearance of its surroundings. The warehouse element of the proposed building would be relatively plain in appearance, and the submitted elevations refer to the use of metal panels on the roof and much of the walls, but the offices would offer more interest, with fenestration on three sides and an external walkway at first floor level. There is a variety of commercial and industrial premises in the vicinity of LDRA, together with the shipyard with its large cranes a short distance to the south. Moreover the Appellant suggested alternative options for external materials, including the greater use of brick cladding, and this is a matter which could be addressed by means of a condition. I am satisfied that the contemporary design of building proposed on the appeal site would be in keeping with its surroundings and I do not consider that it would detract from LDRA's offices. The landscaping proposed on the perimeter of the site would assist in assimilating the building into its surroundings.

Conclusions on the second main issue

38. Subject to conditions concerning a construction management plan, noise mitigation, landscaping and external materials, I conclude that the proposed development would not cause any material harm to the operations of LDRA Ltd, and in this regard that there would be no conflict with the intentions of criterion (i) in Policy EM6 of the UDP.

Nature conservation interests

39. There are international nature conservation sites in the Mersey Estuary, to the north and south of the appeal site, and accordingly an HRA Report was undertaken for the Council in connection with its consideration of the planning application by Merseyside Environmental Advisory Service. Following receipt of the revised application (above, para 4) an updated report was prepared which took into account changes in respect of other plans and projects¹⁷. Accordingly this is the more relevant HRA report, and it is this report to which I refer in considering nature conservation interests: the conclusions do not differ from the report considered by the Council when it determined the planning application.

40. Alabama Way is about 1.5km to the north of the Mersey Estuary Special Protection Area (SPA) and Ramsar site, and about 1.7km to the south of the Mersey Narrows & North Wirral Foreshore SPA and Ramsar site¹⁸. These international sites are also designated as sites of special scientific interest

¹⁷ The HRA report (Document A2) is entitled Draft Habitats Regulations Assessment Report. It was submitted at the hearing by the Appellant as the version which was prepared for the Council in respect of the second application, and its status was not disputed by the Council or other parties.

¹⁸ Figure 1 in Document A2 shows the location of the appeal site in relation to the designated nature conservation sites.

(SSSIs): the area covered by the Mersey Estuary SSSI extends further to the north-west than that part of the SPA and Ramsar site. However it is not as close to the appeal site as the New Ferry SSSI, which is co-extensive with a smaller part of the SPA and Ramsar site along the western bank of the river. Vessels travelling to and from the marine operations and maintenance facility would be likely to travel through Liverpool Bay SPA, to the north of the mouth of the river.

41. Both the Mersey Estuary and Mersey Narrows & North Wirral Foreshore SPA/Ramsar sites are important for the feeding and roosting of wintering and wading birds. Conservation advice from Natural England identifies black-tailed godwit, dunlin, golden plover, pintail, redshank, shelduck, teal and a waterbird assemblage as specific features of the Mersey Estuary. For the Mersey Narrows, the qualifying features are identified as bar-tailed godwit, knot and little gull, common tern and a waterbird assemblage. Designation features of Liverpool Bay include common scoter and red-throated diver, and a waterbird assemblage comprises species also found in the other marine sites¹⁹. Intertidal areas within and adjacent to the development site are supporting habitat for the marine nature conservation sites.
42. The HRA has involved a comprehensive assessment of the proposed development, including construction of the facility, the effect of its presence during the operational phase, and decommissioning. Construction of a 64m² concrete pad on the intertidal rock is considered to have a minimal effect, since invertebrate communities in this highly dynamic area are likely to recolonise and recover rapidly. The engineering design should not have a detectable effect on sedimentation, including supporting habitat, and wave climate. A survey identified redshank, oystercatcher, teal and shelduck as using the site, but in low numbers, and the peak total of assemblage waterbirds is also low, being less than 0.002% of the assemblage. The report records that the professional consensus is that the project area is not a significant feeding, loafing or roosting site, and is insignificant within the context of the individual bird species counts or waterbird assemblages at the Mersey Estuary and Mersey Narrows & North Wirral Foreshore SPA/Ramsar sites. The proposal includes a diesel tank, which would be sited adjacent to the west side of the building. A representative of LDRA and Dr Hennell raised concern about diesel spillage and flood risk, but did not dispute that the position of the tank would be in flood zone 1, that is an area with a low probability of flooding. The tank would be double-skinned, and Merseyside Environmental Advisory Service has confirmed that the HRA was informed by the Appellant's flood risk assessment (FRA) (Document A8). Although the tank would be underground, as tidal flooding is the primary concern in this location, ground levels are relevant. In the vicinity of the diesel tank they would be 9.4-10.2m AOD, markedly higher than the upper level of flood zone 2 (6.73m AOD). There is specific reference to fuel storage and its delivery system in the HRA report, and, subject to avoidance measures (such as double-skinning of the tank), a finding of no likely significant effects is recorded. Operational management and codes of practice are for vessels to avoid aggregations of designated species for Liverpool Bay SPA and waterbird assemblages, and no likely significant effects are anticipated from the movement of crew transfer vessels. Moreover the HRA has been undertaken on the basis of four daily vessel movements in each

¹⁹ The nature conservation interest of these marine sites is summarised in paragraphs 41-43 of Document A2.

direction, whereas the intention is for the facility to operate with two boats leaving and returning under normal circumstances (above, para 9)

43. The clear finding of the HRA is that, whether considered alone or together with other plans and projects, the proposed development would not be likely to have a significant effect on the interest features of the Mersey Estuary and Mersey Narrows & North Wirral Foreshore SPA/ Ramsar sites and Liverpool Bay SPA, and that an appropriate assessment under The Conservation of Habitats and Species Regulations 2010 is not, therefore, required. I have no substantive contrary evidence before me, and I conclude that, subject to conditions requiring a construction management plan, a decommissioning method statement, and approval of the design of the fuel tank, the proposed development would not have a significant adverse effect on sites of nature conservation. In this respect it would not conflict with criterion (ii) in Policy CO1 of the UDP.

Heritage assets

Liverpool World Heritage Site

44. Liverpool Maritime Mercantile City World Heritage Site (WHS) lies on the opposite bank of the River Mersey to the appeal site. The core area includes the three significant waterfront buildings at Pier Head and Albert Dock to the south. Beyond this the buffer zone extends part way across the Mersey²⁰. The riverfront within the WHS can be seen from the appeal site, and, as I observed, the appeal site can be seen from the WHS at Pier Head and the Albert Dock. Accordingly the appeal site lies within the setting of the WHS. The WHS is an asset of extremely high heritage significance of which the view of the waterfront is an important feature. Although there is a view of the WHS from the appeal site, an extensive view of Liverpool waterfront is available just to the north-east along the riverside footway from where the imposing and historic buildings at Pier Head are clearly seen across the river. Development of the appeal site and the loss of public access to a short stretch of the riverside would not prevent public views of the WHS from the south-west in Birkenhead, and it would not materially reduce the extent of these views.
45. Although the appeal site can be discerned from the WHS, it is not prominent, lying within an extensive built form, the main features of which are the Cammell Laird construction hall to the south and the Mersey Tunnel ventilation shaft to the north. Construction of the warehouse and offices at Alabama Way would have a negligible effect on the view across the River Mersey from Liverpool, in which a variety of industrial and commercial buildings are evident in the vicinity of the appeal site. I do not consider that the proposed development would have an adverse effect on the setting of the WHS, or the contribution that setting makes to the significance of this important heritage asset.

Birkenhead Priory

46. There is a group of designated heritage assets at Birkenhead Priory²¹, about 200m from Alabama Way and separated from the appeal site by industrial and commercial buildings. The scheduled monument includes the ruined and buried remains of the 12th century priory, together with the ruins and restored

²⁰ A plan showing the position of the appeal site relative to the WHS is at Document G12.

²¹ The heritage assets at Birkenhead Priory are show on the plan at Document G12.

tower of St Mary's Church, which was built in the 19th century and partly demolished after being made redundant in 1975. Although the remains of the original priory are limited in extent, they represent a core area of the former complex, and retain information about its development. Visits in the 13th century by Edward I associated with his campaigns in Wales emphasise the historical value of the monument. The ruined buildings are also grade I listed, and the former chapter house, which is now used as a chapel, is a grade II* building. The remains of St Mary's Church are on the east side of the former chapter house, and are grade II listed. The close association of these assets enhances their value.

47. The Priory is surrounded by industrial and commercial development, dominant elements of which are the dock and cranes at the shipyard to the south. As a consequence of the intervening built development, the appeal site cannot be seen from ground level at Birkenhead Priory. From the top of St Mary's Church tower, to which there is public access, there are extensive views over the surrounding area. However, due to the position of built development in the foreground, only a portion of the appeal site is apparent from this vantage point, as shown in photograph 7 of the Appellant's landscape and visual impact assessment (LVIA). On the appeal site there is no view of the priory buildings, and only the top of the church tower and its spire can be seen above nearby buildings. I do not consider that the setting of the heritage assets at Birkenhead Priory includes the appeal site: the remains of St Mary's Church cannot be experienced in a meaningful way from this location, and the grade I and grade II* listed buildings are visually separated. Consequently neither the setting of the Priory, nor the contribution that setting makes to the significance of the heritage assets would be adversely affected by the appeal proposal.

The slipway

48. The slipway within the appeal site (also referred to as Monks Ferry) is identified in the Appellant's Historic Environment Desk-Based Assessment as a non-designated heritage asset. The slipway is a 19th century structure, which was previously used as the site of a ferry crossing to Liverpool. Historic maps show a railway terminus immediately to the north of the slipway which closed in the latter part of the 19th century²². This was subsequently used as a coaling station, and maps of 1911, 1928 and 1954 identify Monks Ferry as a coal stage. It is suggested by Dr Hennell that Monks Ferry is the site of an older ferry crossing associated with Birkenhead Priory. The information before me on this matter is inconclusive. Indeed the Archaeological Desk-Based Assessment and Heritage Statement commissioned by Dr Hennell states that: *The exact site and nature of the medieval ferry at Birkenhead is unrecorded, however...it is likely that more than one site was in use, the ferries at Seacombe and Woodside were in use by at least 1546, and Woodside probably has the best claim to being the location of the medieval priory's ferry.*²³ There is historical value derived from the role of Monks Ferry in the transport system of the area in the 19th and 20th centuries, but this is essentially of local interest. The slipway itself is an example of 19th century marine infrastructure, and thus has evidential value. Dr Hennell's heritage statement refers to the slipway as the earliest structure to survive in the core of the Birkenhead docks. That may

²² Monks Ferry and the railway are shown on maps of 1874, 1899, 1911/ 1912 and 1954 included in figure 2 in the Appellant's Historic Environment Assessment and on maps from 1844, 1858, 1874/ 1875, 1899, 1911 and 1928 at figures 17-23 of Document O8.

²³ Document O8, section 4.1, paragraph 2.

be so, but there is an earlier slipway dating from the 1820s further to the south at Rock Ferry, which is a grade II listed building. In my judgement, the slipway is an asset of moderate local heritage significance.

49. The slipway would be physically unaffected by the proposed development. Since the 19th century there have been docks, a railway station, a coaling station, a saw mill, and contemporary industrial and commercial premises in the vicinity of Monks Ferry. The proposed marine operations and maintenance facility would be consistent with this type of development along the riverside, and I do not consider that the development would detract from the setting of the slipway, or the contribution that setting makes to its significance as a heritage asset.

Conclusions on the third main issue

50. The proposed development would be within the settings of the Liverpool WHS and Monks Ferry slipway, but there would be no adverse effect on the setting of these assets. Insofar as Birkenhead Priory is concerned, I have had special regard to the desirability of preserving the listed building and its setting, in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and this is a matter of considerable importance and weight. However I do not consider that the proposal would form part of the setting of the heritage assets at the Priory, and it would not adversely affect them or their setting. I conclude that the proposed development would not cause harm to the significance of heritage assets, and in this respect it would not conflict with Policy CS43 of the emerging Core Strategy or paragraphs 132 and 133 of the NPPF.

Flood risk

51. The appeal site is adjacent to the estuary of the River Mersey, and the river is a potential source of flooding. As part of the Appellant's FRA, flood level data from the Environment Agency has been plotted on the topographical survey²⁴. This exercise indicates that the slipway and the adjacent north-east part of the site are within flood zone 3a, which Planning Practice Guidance (PPG) describes as land with a high probability of flooding. Dr Hennell referred to occurrences of flooding in the car park near the top of the slipway, and a local resident had also observed water on this part of the site. A narrow strip is in flood zone 2, where there is a medium probability of flooding, but the greater part of the site on the landward side of the sea wall is in flood zone 1. Here the probability of flooding is low. The proposed building would be positioned entirely within flood zone 1. Apart from the slipway, the area shown within flood zone 3a would form part of the parking area.
52. The NPPF includes a sequential test, which aims to steer new development in the first instance to areas with the lowest probability of flooding (zone 1). In this case the marine operations and maintenance facility would be in flood zone 1. Moreover table 2 of the PPG includes buildings used for offices and storage in the less vulnerable classification in respect of flood risk, and table 3 identifies this classification of development as appropriate in flood zone 3a.
53. Redevelopment of the site would result in the removal of the wall to the north-east of the lower parking area which marks the extent of flood zone 3a, and

²⁴ Drawing ref ST13738-002 in the flood risk assessment shows the extent of flood zones at the appeal site.

there would be some alterations to ground levels within the site. The PPG defines flood zone 3a as land having a 1 in 200 or greater annual probability of sea flooding. The modelled flood level for the 1 in 200 year return period is 6.33m AOD. In accordance with guidance from the Environment Agency, an additional 127mm has been added to take account of sea level rise and extreme wave height over the lifetime of the development, giving a design flood level of 6.457m AOD²⁵. The Environment Agency has advised that the building should be at a minimum level of 7.057m AOD, providing a freeboard contingency of 600mm, and accordingly the proposal would have a finished floor level of 7.06m AOD to comply with this requirement. A new retaining wall would be built parallel with the slipway and just behind the seawall. Within this retaining wall, the parking area in the north-east corner of the site would have a level of 6.88m AOD, generally higher than the existing ground level, and exceeding both the height of 6.33m AOD marking the extent of flood zone 3a and the design flood level of 6.457m AOD. I have already considered the diesel tank (above, para 42), which would be installed on the landward side of the building in flood zone 1, in a higher part of the site than that by the slipway and sea wall.

54. The Environment Agency has advised that it has no objection to the principle of the appeal proposal, subject to conditions concerning the level of the building, the routing of overland flows, and surface water discharge. On the basis of the evidence before me and subject to the conditions on those matters, I am satisfied that, as required by Policy WAT1 of the UDP, the development would not be at risk from flooding from the Mersey Estuary. I conclude that, having regard to flood risk, the site at Alabama Way would be a suitable location for the proposed development.

Other considerations

Servicing off-shore projects

55. The purpose of the development is to provide a marine operation and maintenance facility for off-shore projects, with specific mention of windfarms in Liverpool Bay and the Irish Sea. The Burbo Bank windfarm is situated off the North Wirral coast, and further to the west the larger Gwynt-y-Mor windfarm was under construction at the date of the planning application. The design and access statement explains that the facility is needed to enable day-to-day monitoring, routine servicing, maintenance, and emergency repair work.
56. Use of the appeal site for the purpose of a warehouse and offices would be consistent with its designation as part of a primarily industrial area in the UDP. Moreover the development would provide support for the renewable energy sector, consistent with the core planning principle in paragraph 17 of the NPPF to support the transition to a low carbon future in a changing climate. In similar vein, Policy CS5 of the emerging Core Strategy includes support for the off-shore renewable energy sector amongst the priorities for the commercial core of Birkenhead, and Policy CS14 identifies supply chain facilities for off-shore wind and the low carbon economy as a priority sector for development. I attach significant weight to the contribution of this facility to the implementation of off-shore renewable energy projects, in line with national planning policy.

²⁵ The calculation of the design flood level is set out in Appendix 5 of the FRA.

UDP Coastal Zone Policies CO1 and CO7

57. That part of the site above the mean low water line site lies within the developed coastal zone, and the proposal should, therefore, be assessed against the requirements of Policy CO1 of the UDP. Similarly Policy CO7, which sets out criteria for development in the inter-tidal zone applies to that part of the scheme between the high water mark and the mean low water line (effectively the western section of the linkspan structure). A locational requirement is specified in the first criterion of both policies. The purpose of the proposal is to service off-shore projects, notably windfarms. Boats would travel to and from the facility on a daily basis, and a coastal location is clearly essential for this form of development.
58. I have already found that the proposal would not adversely affect marine nature conservation, and that the building would be in keeping with its surroundings. For this latter reason there would be no harm to urban landscape value or visual quality (as distinct from the visual amenity experienced by neighbours) and criterion (ii) of Policy CO1 and criterion (v) of Policy CO7 are satisfied. There is nothing before me to suggest that the development would reduce the effectiveness or impede the maintenance of sea defence or coastal protection structures (criteria (iii) Policy CO1 and (iv) Policy CO7), that additional works of this nature would be required, or that the development is within an area likely to be affected by coastal erosion or land instability (criteria (iii) Policy CO1), nor that the linkspan structure would interfere with navigation, adversely affect sedimentary movement, or increase the risk of flooding or erosion elsewhere (criteria (ii), (iii) & (iv) Policy CO7).
59. Policy CO1 expects that public access to the coast will be at least preserved, and Policy CO7 requires that public access should be preserved unless this would be impractical. The greater part of the appeal site comprises a public car park, and a riverside footway from the north continues across the site to its southern boundary. Plan AL16 identifies these areas as highway, which it is proposed would be stopped up. The justification to Policy CO1 refers to an objective of the Council to complete a continuous coastal route for pedestrians and cyclists. The proposal would not sever the riverside route, since a gate prevents access to the south beyond the appeal site. The footway between Priory Wharf and the appeal site would continue to provide public access from the surrounding area to the riverside and the route to the north to Woodside. Only a short stretch of footway would be excluded from public use by virtue of the proposal, and there would still be the opportunity to reach the riverside immediately to the north of the existing slipway. Nevertheless there would be a loss of public access across the site, a distance of about 40m, contrary to the requirement of Policy CO1 to preserve public access to the coast. I appreciate that it would be impractical to permit public access on foot within the operational site, and for this reason I find no conflict with Policy CO7.
60. There is disagreement between the parties concerning the usage of the public car park at Alabama Way. The car park is a pay and display facility, and the Council's evidence, endorsed by the Appellant, is that it is little used. Information from ticket sales for the period from January 2011 to April 2014 indicates that on average only 2-4 vehicles a day are parked on the site. Local residents reported that at times there could be up to 30 cars present, and it was suggested that the discrepancy with ticket sales could be due to use of the car park by disabled persons who are exempt from charges, and the non-

purchase of tickets for some short stays. I note that photographs 9 and 10 in the Appellant's LVIA show use of the car park by at least 6 and 8 cars respectively, in excess of the Council's evidence but markedly less than the number suggested by local residents. There are opportunities to park on nearby streets, and the Council is satisfied that space here would accommodate parking displaced from Alabama Way. No parking survey of the locality has been submitted, but I anticipate that in the evenings and at weekends, when there may be more people wishing to reach the riverside by car, competition for on-street spaces with vehicles associated with the industrial and commercial premises in the locality would be less than during the normal working day. That said, the off-street spaces are further from the riverside and less convenient to use, particularly for disabled persons.

61. As a consequence of redevelopment of the appeal site, there would be no direct access to a short stretch of riverside footway, and the loss of the car park would make it less convenient for those travelling to this part of the riverside by car to reach their destination. I conclude that the proposal would not preserve public access to the coast, and that it would conflict with Policy CO1 of the UDP. This is a matter to which I give limited weight, bearing in mind the short length of footway affected and the continuing opportunity to reach the riverside in the vicinity of Monks Ferry.

Jobs

62. I heard that the marine operations and maintenance facility would provide about 75 jobs, 60 in two off-shore shifts and up to 15 in the offices. Between 10 and 15 jobs already exist with Cammell Laird, and the proposal would, therefore, involve 60-65 new jobs. It was contended on behalf of LDRA and Dr Hennell that this should not be viewed as a benefit of the scheme, since, if the facility were not provided on the appeal site it would be provided elsewhere. I disagree with this approach: consideration is appropriately given to the consequences of the proposal whether they are site-specific or generic in nature.
63. LDRA acquired additional office space at its Monks Ferry site in 2012 with the intention of establishing a software test laboratory which would employ about 50 people. Because of concerns about the implications of the effect of the development on its operations, LDRA has indicated that, if the appeal proposal were permitted, it would relocate to its Newbury site, where it would establish its software test laboratory. The evidence submitted in connection with the appeal indicates that the greatest potential impact on LDRA could be from construction activities with the prospect of vibration and emissions of dust and grit (above, paras 32 -33). A construction management plan would provide a mechanism for monitoring and adjusting the way in which the site is redeveloped, and a suggested condition to this effect was agreed on behalf of LDRA, Dr Hennell and the two main parties. I consider that such a condition should provide an important measure of confidence for adjacent uses, and I cannot be certain that implementation of the appeal proposal would necessarily result in the closure of LDRA's site at Monks Ferry.
64. I have also considered the implications of the proposal for charter boat operators who use the slipway to collect and disembark customers. Representatives of the Mersey Charter Boats Association explained that the slipway is used by about 11 local boats and 5/6 Welsh boats, principally in

connection with fishing trips. The three operators who appeared at the hearing explained that there is no place other than the Monks Ferry slipway where they are able to gain 24 hours access to the Mersey. This is important since fishing trips do not typically last from one high tide to another, and each considered that inability to use the slipway would threaten the future of his business. However no detailed assessments have been submitted to demonstrate that the operation of these businesses cannot be adjusted to withstand the loss of access to the Monks Ferry slipway. Another operator, although objecting to the proposal, has stated that he uses the slipway on rare occasions and works out of Liverpool Marina during the winter months²⁶.

65. Although the charter boat operators make use of the slipway, their right to do so has been questioned by the Appellant. The slipway is owned by the Council, which has explained that the slipway is not open to the public, that there are no recorded permit holders, and that it is intended for use by the Council, emergency services and Government agencies. At the hearing the legal representatives of the Appellant and LDRA/ Dr Hennell agreed that private rights of way could be established if there was evidence of uninterrupted use over a period of 20 years. That is not a matter for consideration as part of this appeal. However, if a private right to access the slipway by the charter boat operators were established they should be able to continue using it irrespective of the development. On the other hand, if no such right were found to exist, there would appear to be no basis for their use of the slipway.
66. The proposal would create up to 65 new jobs, but there is a possibility that jobs at LDRA would be moved out of the area if redevelopment went ahead. The number of jobs created by Cammell Laird would be less than the number potentially affected at LDRA; however in my judgement there would be greater certainty attached to job creation by the development on the appeal site, and I consider that these factors carry equivalent weight. From what I have heard, the ability of the charter boat operators to continue to use the slipway by is not dependent on the outcome of this appeal. Overall, the implications of the proposal for jobs are a neutral factor in the planning balance.

Possible alternative sites

67. The Appellant's site selection exercise considered six possible alternative locations for the proposed development²⁷. Certain of these locations have also been put forward by other parties, and additional suggestions have been made by Dr Hennell for the development to take place further to the north on the west bank of the river or on the Liverpool side. As part of my programme of site visits, I had the opportunity to see the locations at Cammell Laird shipyard and Rock Ferry jetty from the river.
68. Two positions at the shipyard were considered by the Appellant. The wet basin is constrained by tidal conditions and shipping movements. Use of the slipway area would restrict the ability of Cammell Laird to take on major fabrication works which require the use of this part of the yard. There is an existing pontoon close to the slipway but I heard that this is a short-term arrangement, and that another such facility in this area would present difficulties in manoeuvring vessels.

²⁶ This comment was made in a written representation to the planning application.

²⁷ The site selection exercise is reported in the document entitled *Alabama Way Marine Operations Facility – Site Alternatives and Selection*.

69. To the south of the shipyard is Rock Ferry jetty. There is disagreement between the Appellant and the charter boat operators about the availability of land close to the jetty, but this location is close to the Mersey Estuary SPA/Ramsar site, and there could be conflict with existing shipping given the proximity of the Tranmere oil terminal. Moreover the length of the jetty, supported by the Port of Liverpool chart (Document A4), indicates that the river channel is not close to land. Both of the locations at Bromborough raise the prospect of conflict with shipping using the channel for Eastham Dock and the Manchester Ship Canal, and the proximity of the Mersey Estuary SPA/Ramsar site is a potential constraint here.
70. The Appellant acknowledges that the former Rose Brae dockyard, to the north of the appeal site, would satisfy several criteria. However the land is allocated for housing on the UDP Proposals Map, and development here would cut across the riverside footway, having a more damaging effect than the closure of the short length at the appeal site. Dr Hennell has pointed to unused land and foreshore between Pacific Road at Woodside and Seacombe, and has also made reference to the Liverpool side of the river. However there are no details of specific locations in these extensive areas. The information before me does not indicate that any of the alternative locations put forward would be more appropriate for the proposed marine operation and maintenance facility than the appeal site.

Tourism

71. The proposal would not prevent access to the riverside in the vicinity of Monks Ferry nor detract from views of the Liverpool waterfront in the WHS. I have found that the appeal site does not form part of the setting of Birkenhead Priory, and the proposal would not harm the attractiveness of that feature. Although there would be a loss of a public car park, there are other opportunities to park in the vicinity. I have read that the car park is used in connection with the Across Mersey Swim which raises funds for charity. There is nothing before me to indicate that no alternative arrangements could be made for this event. On the information before me, I do not consider that the proposal would prejudice the continued attractiveness of urban tourist resources, and it would not, therefore, conflict with Policy TL1 of the UDP.

Conditions

72. I have already referred to conditions concerning a construction management plan, noise mitigation, construction times, surface water, overland water flows, landscaping, external materials, the finished floor level, a decommissioning statement and design of the fuel tank, all of which would be necessary for the development to proceed. To avoid unacceptable conditions for the occupants of nearby properties, controls should be imposed over the times of deliveries. It would not be appropriate to include a condition restricting the number of crew transfer vessels and their hours of operation since the pontoon is outside the jurisdiction of the Town and Country Planning Act. Conditions should require the approval of boundary treatment and external lighting schemes, and details of ground levels and refuse storage, and provide for the protection of retained trees to ensure that the development would be in keeping with its surroundings.
73. In the interest of nature conservation, tree removal should avoid the bird nesting season. The site has previously been used as a saw mill and a coal

stage: consequently an investigation into contamination is required. An investigation should be undertaken to conserve archaeological interest. To safeguard highway safety, details of works abutting the footway and cycle path on the north side of the site should be submitted for approval. Provision of cycle parking facilities would encourage the use of alternative means of transport to the car, and a scheme for waste management would promote the recovery of construction waste and should form part of the construction management plan. For the avoidance of doubt and in the interests of proper planning, it is important that the development is carried out in accordance with the specified plans.

74. The Appellant has put forward the proposal as a blend of B1, B2 and B8 uses. A condition restricting the use of the site to B1 and B8 uses would therefore be unreasonable. In any event conditions requiring a construction management plan and noise mitigation measures should protect the amenities of adjacent occupiers, and they would also render a condition concerning loud individual noises unnecessary.

Overall conclusions

75. The appeal site lies within a primarily industrial area on the UDP Proposals Map. Within this designation, the proposed offices and warehouse would be acceptable in principle. However the criteria in Policies EM6 and EM7 apply to new employment development and are also relevant. The development of the site at Alabama Way for a marine operations and maintenance facility would not cause unacceptable harm to the living conditions of nearby residents at Priory Wharf, nor would it result in material harm to the operations of LDRA Ltd. Insofar as nature conservation interests are concerned, there would be no significant adverse effect, and I have found no conflict with Policies EM6 and EM7.
76. The proposal would not detract from the significance of heritage assets, and there would be no conflict with Policy CH1 of the UDP which seeks to safeguard listed buildings. Policies in the UDP concerning the developed coastal zone and the inter-tidal zone are also relevant to the appeal proposal. Whilst there is compliance with most provisions of Policies CO1 and CO17, the closure of about 40m of the riverside footway would conflict with the requirement to preserve public access to the coast.
77. As a consequence of the conflict with Policy CO1 concerning public access to the coast the proposal would not be fully consistent with the Development Plan. I consider that the effect on jobs is of neutral significance in the planning balance, but the proposal would contribute to the implementation of off-shore renewable energy projects, and it would thereby accord with a core planning principle of the NPPF. This is a significant benefit of the proposal which clearly outweighs the limited harm of conflict with Policy CO1 arising from the loss of a short stretch of footway.
78. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Richard Clegg

INSPECTOR

Schedule A: Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: plans AL2, AL3, AL5, AL6, AL7, AL8, AL9, AL10, AL11, AL13 and AL14 in Schedule B.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a scheme of boundary treatment has been submitted to and approved in writing by the local planning authority. The building shall not be occupied until the boundary treatment has been provided in accordance with the approved scheme.
- 5) No development shall take place until a scheme of external lighting has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until full details of floor and ground levels, including a minimum finished floor level of 7.06m AOD, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No development shall take place until a scheme of landscaping, including details of retained trees, has been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 8) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority. No development shall take place until a scheme of fencing for the protection of retained trees has been submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved scheme before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any

- area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 9) No deliveries shall be taken at or despatched from the site outside the hours of 0830 to 1800.
 - 10) No development shall take place until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period, and it shall address:
 - i) Site supervision
 - ii) Construction noise and vibration management, monitoring and mitigation measures
 - iii) Storage of plant, materials and fuel
 - iv) The erection and maintenance of security hoarding
 - v) Measures to prevent the deposit of dust, dirt, debris and other deposits on the highway
 - vi) Measures to monitor and control the emission of dust and grit during the construction period
 - vii) Access routes to be used
 - viii) The protection of areas of ecological sensitivity
 - ix) Methods to be used for all channel and water margin works
 - x) Methods for the control and eradication of Japanese knotweed and other invasive plant species
 - xi) Methods to avoid the run-off and release of pollutants and construction debris into the River Mersey
 - xii) Details of construction lighting
 - xiii) The recovery and reuse of construction waste.
 - 11) Construction work shall not take place outside 0800 to 1800 hours from Mondays to Fridays and 0800 to 1300 hours on Saturdays, nor at any time on Sundays or public holidays.
 - 12) No development shall take place until a noise management scheme, prepared in accordance with the noise mitigation measures set out in the noise impact assessment prepared by Bureau Veritas, ref 8574332 and dated 26 November 2014, has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme.
 - 13) The development shall not be decommissioned until a decommissioning method statement has been submitted to, and approved in writing by, the local planning authority. The statement shall include the programming of works; methods for the removal of intertidal structures; methods to minimise crushing, abrasion and sediment resuspension in the intertidal area; and noise mitigation measures. Decommissioning shall be carried out in accordance with the approved statement.
 - 14) No tree felling or vegetation clearance works shall take place during the bird nesting season (1 March – 31 August inclusive) unless a survey confirming the absence of nesting birds has been approved in writing beforehand by the local planning authority.

- 15) No development shall take place until a scheme of archaeological investigation, including a programme for implementation, has been submitted to, and approved in writing by, the local planning authority. The archaeological investigation shall be implemented in accordance with the approved programme.
- 16) The development hereby permitted shall incorporate overland flow routes as shown on drawing ref ST13738-003 in the flood risk assessment prepared by Wardell Armstrong and dated April 2014.
- 17) Surface water run-off shall be discharged through the site drainage system into the River Mersey, using the existing point of discharge.
- 18) If, during the course of development, any contamination is found which has not been previously identified, then no further development shall take place until a scheme for the remediation of this source of contamination has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 19) No development shall take place until a scheme for the design of the fuel tank and the fuel delivery system to the pontoon, has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 20) The building shall not be occupied until cycle parking facilities have been provided in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 21) The building shall not be occupied until the alterations to the footway and cycle path on the north side of the site have been implemented in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 22) The building shall not be occupied until arrangements for the storage and disposal of refuse have been implemented in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.

Schedule B: Plans submitted as part of the appeal

Appeal ref	Title	Appellant's ref
AL1	Location plan 1:5000	1370-SI-17
AL2	Location plan 1:1250	1370-SI-15
AL3	Proposed development site	1370-SI-08 Rev B
AL4	Existing site layout	1370-SI-03 Rev B
AL5	Proposed site layout	1370-SI-07 Rev J
AL6	Ground floor layout	1370-GA-101 Rev K
AL7	First floor layout	1370-GA-102 Rev K
AL8	Roof plan	1370-GA-103 Rev C
AL9	North and east building elevations	1370-GA-107.01 Rev E
AL10	South and west building elevations	1370-GA-107.02 Rev D
AL11	Site sections	1370/SI/14 Rev B
AL12	Topographical survey	1370-SI-02
AL13	Proposed external works layout – sheet 1	1370-SI-12.01 Rev B
AL14	Proposed external works layout – sheet 2	1370-SI-12.02 Rev B
AL15	Indicative soft landscape proposals	D4735.004A
AL16	Area of highway to be stopped-up	1370-SI-16
AL17	Indicative ground floor furniture layout	1370-GA-106.01 Rev G
AL18	Indicative first floor furniture layout	1370-GA-106.02 Rev B

The plans in Schedule B were submitted with the appeal, with the exception of Plan AL11 which was submitted at the hearing. Plans AL10 and AL12 are unchanged from the plans considered as part of the planning application.

APPEARANCES

FOR THE APPELLANT:

Mr G Phillips	Solicitor, Watson, Farley & Williams LLP.
Mr I Grimshaw BA(Hons) MA(LM) MSc CMLI MRTPI	Director, The Environment Partnership Ltd.
Mr R Cope BSc(Hons) PgDip MIOA	Principal Consultant (Acoustics and Vibration), Bureau Veritas UK Ltd.
Mrs H Kelly	Principal Heritage Consultant, The Environment Partnership Ltd.
Mr A Plant BA(Hons) BArch(Hons) RIBA	Director, Ainsley Gommon Architects.
Mr T M Jones	Project Manager, Alabama Way Marine Operations Facility, Cammel Laird Shiprepairers & Shipbuilders Ltd.
Mr M Vitkovitch	Civils Project Director, Cammel Laird Shiprepairers & Shipbuilders Ltd.
Mr N Shaw	Technical Director, Wardell Armstrong LLP.
Miss E Skelley	Senior Environmental Scientist, Wardell Armstrong LLP.

FOR THE LOCAL PLANNING AUTHORITY:

Mrs C Parker MRTPI MSc MBA	Principal Planner, Wirral BC.
Mr N Joughin	Senior Environmental Health Officer, Wirral BC.
Dr A Jemmett PhD MBA	Director, Merseyside Environmental Advisory Service.

INTERESTED PERSONS:

Mrs P Lawson	Chair, Priory Wharf Management Company Ltd; and Secretary, Stronger Communities Initiative Assembly.
Mr T Jones of Counsel	Instructed by Richard Buxton Environmental and Public Law.
Miss L Foster MSc MA	Partner, Richard Buxton Environmental and Public Law, representing Dr Hennell and LDRA Ltd.
Dr M A Hennell	Managing Director, LDRA Ltd.
Mr S Dickinson	Mersey Charter Boat Association; and Operator of Tuskar Charters.
Mr G Flint	Owner, Discovery Charters Ltd.
Mr C Evans	Mersey Charter Boat Association; and Operator of Mersey Lass.
Councillor P Cleary	Member of the Council for Birkenhead and Tranmere Ward.
Councillor D Realey	Deputy Chair of the Planning Committee.
Mr Blamey	Local resident.
Mr M Cartwright	Local resident.
Mr P J Dowling	Local resident.
Mrs M Hennell	Local resident.

Mr G Miller	Local resident.
Mrs L Miller	Local resident.
Mr Morton	Local resident.

THE APPELLANT'S DOCUMENTS

- A1 Committee report on planning application for revised proposal.
- A2 Draft Habitats Regulations Assessment Report on the revised proposal.
- A3 Letter dated 23 February 2015 from The Mersey Docks & Harbour Company Ltd to the Appellant concerning possible alternative sites.
- A4 Chart of the Port of Liverpool.
- A5 Mr Cope's note on noise impact assessment methodology.
- A6 Alabama Way, Birkenhead – Construction Noise and Vibration Assessment.
- A7 Alabama Way, Birkenhead – Operational Noise Impact Assessment to Commercial Premises.
- A8 Letter dated 20 April 2015 from Dr Jemmett to Mr T M Jones concerning flood risk and the fuel storage tank.

OTHER PARTIES' DOCUMENTS

- O1 Letter dated 24 February 2015 from the Architectural History Practice to Dr Hennell concerning Monks Ferry. Submitted by Mr T Jones.
- O2 Letter dated 6 January 2015 from Foxfield School to Dr Hennell concerning the appeal proposal. Submitted by Mr T Jones.
- O3 Mr Flint's speaking notes and bundle of photographs of suggested alternative sites.
- O4 Letter from Mr Dickinson to the Council concerning use of the slipway at the appeal site.
- O5 Mr Evans's speaking notes.
- O6 LDRA brochure. Submitted by Mr T Jones.
- O7 Dr Hennell's statement in response to Documents A7 & A8 - The Impact of Dirt and Vibration on LDRA Ltd.
- O8 Archaeological Desk-Based Assessment and Heritage Statement – Monks Ferry. Submitted by Miss Foster for Dr Hennell.
- O9 Emails dated 28 February, with bundle of photographs and notices, and 18 May 2015 to Mr Flint from Mr L Hanlon concerning the use of the slipway at the appeal site.
- O10 Judgement in *Berkeley v Secretary of State for the Environment & Another*: [2001] 2 AC 603. Submitted by Richard Buxton Environmental and Public Law for Dr Hennell.

GENERAL DOCUMENTS

- G1 Wirral UDP Proposals Map (part).
- G2 Extract from the UDP.
- G3 Extracts from the emerging Core Strategy.
- G4 Schedule of Monuments entry for Birkenhead Priory.
- G5 Recommendation for inclusion of Liverpool on the World Heritage List.
- G6 Listed building entry for Number 4 Dry Dock, Laird's Old Yard.
- G7 Letters of notification of hearing resumption and programme of site visits.
- G8 Decision notice for revised application.
- G9 List of suggested conditions. Submitted on behalf of the Appellant, the Council, LDRA Ltd and Dr Hennell.

- G10 Suggested conditions concerning use of the building and the mooring of vessels. Submitted by Miss Foster.
- G11 List entries of designated heritage assets in the vicinity of the appeal site.
- G12 Plan of Liverpool WHS, Birkenhead Priory and the appeal site.