



Monday, 8 July 2019

## **PLANNING COMMITTEE**

A meeting of **Planning Committee** will be held on

**Tuesday, 16 July 2019**

commencing at **5.30 pm**

The meeting will be held in the Meadfoot Room - Town Hall

### **Members of the Committee**

Councillor Pentney (Chairman)

Councillor Barrand

Councillor Brown

Councillor Dart

Councillor Dudley

Councillor Hill

Councillor Barbara Lewis

Councillor Manning

Councillor Jacqueline Thomas

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**A prosperous and healthy Torbay**

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For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

[www.torbay.gov.uk](http://www.torbay.gov.uk)

# PLANNING COMMITTEE AGENDA

## 1. Apologies for absence

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

## 2. Disclosure of Interests

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda.

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda.

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

## 3. Urgent Items

To consider any other items that the Chairman decides are urgent.

## 4. Shell Riviera Garage, 376 Torquay Road, Paignton (P/2019/0412/VC)

(Pages 4 - 12)

The application proposes the removal of condition 1 relating to application P/1997/0872 to enable the petrol filling station to operate 24 hours, 7 days a week.

## 5. Harbour Light Restaurant, North Quay, Roundham Road, Paignton (P/2019/0237/PA)

(Pages 13 - 31)

Internal and external alterations to the application building with the creation of a restaurant across both floors, including a small coffee shop/takeaway to the ground-floor.

## 6. Harbour Light Restaurant, North Quay, Roundham Road, Paignton (P/2019/0238/LB)

(Pages 32 - 39)

Application for listed building consent concerning works affecting the fabric of the building, and complements the associated application for planning permission.

**7. Public speaking**

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.

**8. Site visits**

If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, before the meeting. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

**Application Number**

P/2019/0412

**Site Address**

Shell Riviera Garage  
376 Torquay Road  
Paignton  
TQ3 2DN

**Case Officer**

Miss Emily Elliott

**Ward**

Preston

**Executive Summary/Key Outcomes**

The Shell Riviera Garage in Paignton, is a petrol filling station which was granted planning permission in 1990 (P/1990/0655). This planning permission was later varied by permission P/1997/0872 to allow an extension of the approved operating hours to 0600-0000hrs. The application under consideration proposes the removal of condition 1 relating to permission P/1997/0872 to enable the petrol filling station to operate 24 hours a day, 7 days a week.

The proposal is considered to be acceptable in terms of the principle of development, impact on residential amenity and highways. The proposal meets the requirements of the Torbay Local Plan and the Paignton Neighbourhood Plan.

**Recommendation**

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

The application has been referred to Planning Committee due to the number of objections that have been received.

**Statutory Determination Period**

10<sup>th</sup> June 2019. Extension of time agreed until 16<sup>th</sup> August 2019.

**Site Details**

The site is an established petrol filling station comprising a 4 pump island with an overhead canopy facing onto a single storey forecourt shop.

The site is bounded by brick boundary walls and on the eastern boundary there is a hedge that has a variable height of some 2.5-3 metres. The north of the site fronts onto Torquay Road. To the east of the site beyond a public highway is a small number of terraced dwellings and the Devon Partnership NHS Trust and Disability Information Service. To the south of the site is Hollacombe Community

Resource Centre. To the west of the site are a number of residential terraced dwellings.

The site forms part of the built up area, but is not otherwise subject to any designations within the Torbay Local Plan.

### **Detailed Proposals**

The petrol filling station was granted planning permission in 1990 (P/1990/0655), which was then later varied by P/1997/0872 to allow extended opening hours. The application proposes the removal of condition 1 relating to application P/1997/0872 to enable the petrol filling station to operate 24 hours, 7 days a week.

The applicant wishes to operate the premises 24 hours, 7 days a week, in a response to lifestyle changes. The submitted information states that the applicant wishes to limit the activity to the shop and forecourt pumps only to address any concerns between the hours of 0000-0600. The applicant has also indicated in the submitted planning statement that these unrestricted hours of use can be given as a temporary consent to fully and properly assess the impact of the proposal on local amenity.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Paignton Neighbourhood Plan 2012-2030

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary of Consultation Responses**

**Senior Environmental Health Officer:** Further to your recent consultation regarding the above variation of condition to allow 24 hour trading I would confirm that I have no objection subject to this being limited to fuel sales on the forecourt and use of the shop. (Use of car wash, deliveries etc. to be excluded as per the supporting information provided).

I have read the noise impact assessment report produced by Hepworth Acoustics for the above site, and I have examined their findings. The assessment was undertaken in accordance with the guidelines set out in British Standard 4142: 2014 *'Methods for rating and assessing industrial and commercial sound'*, and has been based on noise surveys undertaken at the site. This is an acceptable method of determining whether noise from commercial sources is likely to have a significant detrimental impact on the amenity of nearby residential properties. As such I would agree with their conclusion that noise from cars using the forecourt during the proposed extension of operational hours will not result in a significant noise impact to the amenity of neighbouring residents.

**Designing Out Crime Police Officer:** The Police have dealt with reports from the premises with regard to forecourt crime e.g. fuel theft and late night antisocial/unacceptable behaviour, as such there is concern that an extension to the hours of trading could exacerbate this. There is also concern that there could be an increase in noise complaints from residents as a result of human and vehicle activity and behaviours throughout the night.

To provide reassurance all round and to enable the planning authority and police to monitor the situation the applicant's suggestion of a 'trial' period is much supported but it is recommended this is for 6 months and not 12 months. It is requested that I be re-consulted at the end of the trial period and provided sufficient time to carry out a crime and ASB overview and liaise with the local policing team.

It is not clear if the CCTV at the premise is monitored or if it has an audio capacity but for the safety of staff and to assist the police in the detection of crime and antisocial or unacceptable behaviour a monitored CCTV and alarm system should be installed (if not already). The system should have an audio facility and be linked into a personal attack function and capable of facial recognition and number plate identification.

The location and heights of the cameras should be appropriately placed so as to not be hindered by obstacles and it is vitally important that the surveillance gap across the forecourt is maintained.

A Passport for Compliance Document (formerly known as an Operational Requirement Document) should be obtained for each camera. *(A passport for compliance document is for organisations considering a surveillance camera system. The compliance document is crucial in specifying what the organisation wants the CCTV system to do, perform and to ensure that the passport complies with all relevant regulations. The compliance document will also set out how much it will cost to procure and to run. The passport to compliance puts responsibility for system development in the hands of the organisations that operate them. It guides organisations through the stages they need to go through*

*when planning, installing and eventually operating surveillance camera systems. It should be completed for new systems or where significant changes are made to an existing system).*

Lighting should be compatible with the CCTV system and the spread of lighting should provide minimal shadow spillage and be set at a uniform level ensuring there are no over lit or poorly lit areas where crime, fear of crime or ASB can flourish.

The night pay system is a good design feature in assuring the safety of night workers, but this must have appropriate glazing to protect staff with a suitable alarm and personal attack function.

Fuel theft has been a long standing issue for Petrol Filling Stations and if this is a concern for the applicant I would be happy to discuss additional prevention methods but in the first instance to assist in the prevention of fuel drive offs there are member companies listed with Secured by Design who have approved crime reporting and CCTV products successfully tested to meet the Police Preferred Specification.

It may prove useful to share a recommendation that consideration should be given to the inclusion of a pre-payment system so that customers pay for fuel prior to filling up. This would also prevent the need for costly retrospective fits should fuel theft become an issue.

If it is the intention for alcohol to be sold past the current approved licensing hours then the applicant should consult the Force Licensing Department as soon as possible.

**Highways Engineer:** Highways have no technical issues.

**Paignton Neighbourhood Forum:** No comments received.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Thirty neighbour notification letters were sent to those neighbours which the development could affect. Five letters of objection has been received.

Concerns raised by the objectors relate to:

- Noise
- Impact on local area
- Privacy/overlooking
- Residential amenity

### **Relevant Planning History**

P/2004/1295: Installation of ATM Cash Machine. Approved 31/08/2004.

P/2001/0799: Illuminated Signs In Connection With Proposed Installation of Car Wash. Approved 03/08/2001.

P/2001/0750: Installation of Car Wash. Removal of Jet Wash. Approved 03/08/2001.

P/1998/0262: Formation Of Jet Wash With Portico To Replace Existing Rollover Car Wash And Replacement Vacuum And Air/Water Facilities. Approved 25/03/1998.

P/1998/0261: Illuminated Advertisements. Approved 25/03/1998.

P/1997/0872: Variation Of Condition 4 Attached To Planning Permission 90/0655/Pa To Allow Hours Of Opening Between 6.00 Am And Midnight. Approved 14/08/1997.

P/1997/0142: Illuminated Signage To Existing Filling Station. Approved 20/03/1997.

P/1993/0876: Installation of Interceptor For Use In Conjunction With Existing Car Wash. Approved 31/08/1997.

P/1990/0655: Redevelopment Of Filling Station, Demolition Of Sales Building, Erection Of New Sales Building And Car Wash Building And Raising Of Canopy Height. 17/07/1990.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Residential amenity
3. Highways
4. Designing out Crime

#### **1. Principle of development**

As the petrol filling station is an established use, the principle of development is considered acceptable.

#### **2. Residential amenity**

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors have raised concerns regarding noise, privacy/overlooking, and the impact on the local area in terms of residential amenity. Both the Council's Senior Environmental Health Officer and the Designing out Crime Police Officer have commented on this application. The latter has commented on potential crime issues, which are discussed later in this report, and also stated that the proposal could result in noise nuisance for neighbours. The Council's Environmental Health Officer has assessed the submitted noise assessment and confirmed that they have no objections to the 24 hours use of the premises, subject to it being limited to fuel sales on the forecourt and the use of the shop, with the exclusions mentioned in the planning statement, which include the following:

- That all fuel and shop purchases would take place through the night pay hatch between 0000 and 0600 hours.
- Restrict fuel sales to the two inner pump islands closest to the southern boundary between 0000 and 0600 hours.
- Restrict external lighting to the recessed lights within the underside of the canopy and immediately above the two inner pump islands.
- Restrict car wash, vacuum, air and water hours to between 0700 and 2300 hours.
- Restrict all deliveries between 0700 and 2300 hours.
- Signage within the forecourt area requesting that customers respect neighbouring amenity.

The applicant has also agreed to a temporary planning permission of 12 months to enable the Local Planning Authority to monitor the activity of the premises. The Designing out Crime Officer has suggested a period of 6 months instead, however, planning officers consider this to be an unreasonably short amount of time to properly assess and understand the effects of the proposal.

Subject to the use of planning conditions to secure the above mentioned restrictions, it is considered that the proposal is unlikely to result in unacceptable additional harm to the amenities of neighbours over and above the existing situation where the premises can already open from 0600 until 0000. The use of a further condition to secure a 12-month temporary permission will enable the Council to re-consider the matter later following a testing period.

The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

### **3. Designing out Crime**

The Designing Out Crime Police Officer has reviewed the proposal and has stated that the Police have dealt with reports from the premises with regard to forecourt crime e.g. fuel theft and late night antisocial/unacceptable behaviour, as such there is concern that an extension to the hours of trading could exacerbate this. The applicant has submitted further details stating that the site has four CCTV cameras in front of the forecourt, along with one CCTV camera each side of the forecourt and two CCTV cameras at the back of the forecourt shop. The applicant has indicated that they are able to add more CCTV cameras if necessary. The CCTV is monitored on a hard drive system. The premises benefits from an alarm system, with an additional chasers silent button attack alarm.

The premises are locked at night and all trading is undertaken through the night pay hatch. The premises when locked presents a relatively secure place of work. The only immediate access is through the night pay hatch which has no direct opening between the cashier and the customer. The entrance door is activated

from the cashiers counter. The glazing to the shop front is bandit resistant. The applicant has also indicated that they can introduce a pre-pay system at the pumps if necessary.

A condition is recommended to secure measures for designing out crime and subject to its use, it is considered that the proposal would not result in any unacceptable crime or anti-social behaviour impacts. In any case, the proposed temporary permission would allow for a period of testing.

#### **4. Highways**

Policy TA1 Transport and Accessibility of the Local Plan states that the Council seeks to improve road safety, quality of life and equality of access for all, minimising conflict between road users and prioritising the transport hierarchy. Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development.

The Council's Highways Engineer raises no objection to the proposal and considers there to be no technical issues with the proposal. It is considered to extend the hours of use of the premises to 24 hours, 7 days a week would not have a significant impact on the highway, given that the site can currently operate between 0600 to 0000, it is considered that the potential traffic generated between the hours of 0000-0600 would not exceed the capacity of the petrol filling station and therefore would not be detrimental to the safety of the public highway.

The proposal is considered to be in accordance with Policies TA1 and TA2 of the Local Plan.

#### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment,

pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

#### **Temporary Permission**

The extended operating hours hereby approved shall be discontinued one calendar year from the date of this planning permission, and the operating hours shall then revert to those approved by planning permission P/1997/0872.

Reason: To maintain control over a temporary form of development and in order that the Local Planning Authority can assess the impact of the development, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

#### **Hours of Use**

The use of on-site car wash, vacuum, air and water facilities, and deliveries to the premises, shall only take place between the hours 0700 to 2300 Monday to Sunday. Only the two inner pumps closest to the southern boundary shall be used by customers between the hours of midnight to 0600. All fuel and shop purchases made between the hours of 0000 to 0600 shall be made through the night-time pay hatch.

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

#### **Storage**

No storage shall take place at the premises except inside the shop.

Reason: In the interests of visual impact and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

**Designing out Crime**

Prior to the extended opening hours coming into effect, a scheme of measures for designing-out crime and preventing anti-social behaviour shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the proposed use of CCTV, appropriate lighting for the premises, and signage relating to neighbour amenity. The approved measures shall be fully installed prior to the extended hours taking effect.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

**Relevant Policies**

- DE3 - Development Amenity
- SS4 - The Economy and Employment
- TA1 - Transport and Accessibility
- TA2 - Development Access
- PNP1(c) - Design Principles

**4Application Number**

P/2019/0237

**Site Address**

Harbour Light Restaurant  
North Quay  
Paignton  
TQ4 6DU

**Case Officer**

Miss Emily Elliott

**Ward**

Roundham with Hyde

**Executive Summary/Key Outcomes**

The application proposes internal and external alterations to a harbour-side building located at North Quay, Paignton, which contains restaurant and retail units, which are currently vacant, along with storage associated with the harbour. The proposal is for the extension of the restaurant use, which would fill the whole of the building, and would include the addition of an external terraced area at first-floor level, external store areas attached to the east of the building, external seating areas, along with new condenser units, structural alterations and changes to the fenestration.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, impact on the listed building, impact on residential amenity, highways and flood risk. The proposal meets the requirements of the Torbay Local Plan and the Paignton Neighbourhood Plan.

**Recommendation**

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

As the proposed development is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections, the Council's constitution requires that the application be referred to the Planning Committee for determination.

**Statutory Determination Period**

29<sup>th</sup> April 2019.

**Site Details**

The application site comprises a Grade II listed building, containing vacant restaurant and retail units along with storage uses associated with the harbour. The listing states that the building was likely to have been used as fish cellars

and net stores associated with the fishing industry, which then later, in part, came into use as a restaurant with some storage use associated with ships in the harbour. The building has two storeys.

The site is located within Flood Zones 2 and 3. The site is also within the designated Roundham and Paignton Harbour Conservation Area. There are a number of Grade II Listed Buildings within the immediate vicinity of the site. The site is within 250 metres of Roundham Head SSSI. The site is not located within Paignton Town Centre, however it is in close proximity.

### **Detailed Proposals**

The application proposes internal and external alterations to the application building with the creation of a restaurant across both floors, including a small coffee shop/takeaway to the ground-floor. Internally, the proposal would involve the removal of six stores and two shops at the ground-floor level and the removal of one store area at first-floor level.

The external alterations include a ground-floor extension off the eastern elevation to accommodate storage including refuse storage; the addition of a first-floor, outdoor terraced area, also off the eastern elevation; the removal of the existing shutters and awnings; the insertion of a serving hatch to the north-western elevation at ground-floor level; the replacement of windows, doors and downpipes; the blocking up of a number of doors; and associated works. The proposal would include two outdoor seating areas alongside the building at ground-floor level (one off its western side, and the other of its southern side), as well as on the proposed first-floor terrace.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### **Development Plan**

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Paignton Neighbourhood Plan

#### **Material Considerations**

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary Of Consultation Responses**

**Police Designing Out Crime Officer:** From a designing out crime and disorder perspective I would like to advise that I have no particular concerns with regard to the proposed alterations.

**Highways Engineer:** Highways have no technical issues.

**South West Water:** No objection.

**Natural England:** No comments to make on this application. Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

**Drainage Engineer:** The development lies within Flood Zone 3a. The developer has submitted a detailed flood risk assessment in support of the planning application. The existing ground floor use of this building is storage, shops and a kitchen area which would have a “vulnerable” classification. The first floor of the building is currently used as a restaurant and bar area. This would be classified as “more vulnerable” however as it is located at first floor level this usage would be allowed in Flood Zone 3. The proposed development identifies that the ground floor usage will be changed to include a kitchen and licensed bar. A change of use of this nature would increase the vulnerability of the ground floor to “more vulnerable”. Satisfied with the proposed flood mitigation measures stated in the detailed flood risk assessment.

**Environment Agency:** The proposal would be classed as Minor Development (as the alterations to the development do not increase the size of buildings. As such, our Flood Risk Standing Advice applies in this case:

<https://www.gov.uk/guidance/flood-risk-assessment-standing-advice#vulnerable-developments-standing-advice>

**Strategic Transport Officer:** Provision for secure, covered cycle parking for Staff and also some form for visitors should be provided. A travel plan should also be provided.

The underpass public Right of Way (part of the SWCP policy SS6.3) should be appropriately lit and kept clear of obstructions as should any access way to the public ferry embarkation point and access for boats on trailers etc. to the slip way. Any outside seating area may need to be demarcated and paraphernalia appropriately and securely stored away when not in use. Safe access and egress should be maintained via the main entrance to the property.

**Interim Heritage Advisor:** The building is located in the Roundham & Paignton Harbour Conservation Area and is a Grade II Listed Building. The building appears from the historic records to have started life as a fish cellar and net store. The reports suggest that due to the nature of the historic use of the building as a store the majority of the historic fabric seems to be limited to the existing rubble wall build up and exposed timber roof structure.

In my view whilst the building has a considerable history the historic merit lies in its historic use and its architecturally functional design. I am aware that the case officer has negotiated changes to the original submission which has served to make improvements and helped resolve some of the concerns regarding the details, and achieved an acceptable balance between the commercial operation of the building whilst maintaining the building's special merit. The treatment to the area of the existing gift shopfront has been an issue of debate, however, the shopfront in itself whilst part of the story of the building is not intrinsic in terms of the buildings architectural or historic merit. The treatment of this area with timber board should at least serve to echo the buildings original purpose.

It will be important to carefully condition any permission including to ensure that details of the new fenestration is submitted for approval.

On balance whilst the proposal involves a number of interventions these do not cumulatively cause significant harm of the building's overall significance as a listed building, especially accounting for the fact that the use of the building should ensure it has an available longer term future. I also consider that the alterations are considered to preserve the character and appearance of the Roundham & Paignton Harbour Conservation Area.

**Historic England:** On the basis of the information available to date, in our view you do not need to notify or consult us on this application under the relevant statutory provisions, details of which are enclosed.

**Senior Environmental Health Officer:** Having reviewed the attached document it appears to be a plan showing the layout of the ductwork with little information regarding an assessment of the risk of potential odour nuisance from cooking smells or information regarding the level of odour abatement that may be necessary. The applicant would be best advised to have regard to the following document - *Control of Odour and Noise from Commercial Kitchens Exhaust Systems – 2004 Update prepared by NETCEN for the Department for environment, Food, and Rural affairs.*

In short, I would not object to this application being approved, subject to a condition being included to be worded as follows:

Details of Extract/Ventilation System:

*No development shall take place until further details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including details of its method of construction, odour control measures as appropriate, and noise levels, have been submitted to and been approved in writing by the Local Planning Authority. The approved scheme shall be installed before the use hereby permitted commences and thereafter shall be permanently retained.*

*Reason: These details need careful consideration and formal approval to safeguard the amenity of adjoining properties and to protect the general environment. The details are needed prior to the start of work so that measures can be incorporated into the build.*

With regards to the hours of use, I would recommend the following:

**Harbour side (southern) seating area:**

Sunday to Thursday – 08:00 – 23:00

Friday and Saturday – 08:00 – 24:00

**Cinema side (western) seating area:**

Monday – Sunday – 08:00 – 21:00

These hours would generally reflect those for similar licenced premises around the bay, and the restriction on Sunday evenings to 21:00 would help protect the amenity for the nearby cottage on Roundham Road which is directly above that area.

**Strategic Appraisal Officer:** The proposed development does not overlap with any European designated site. It is not within the South Hams SAC sustenance zone or strategic flyway as designated by Natural England (2010). The interrogation of Magic Maps (below) shows a component of the Lyme Bay and Torbay Marine SAC reefs feature is approximately 250m, at its nearest point, from the site and there are no sea caves present close to the site.

The Appropriate pollution control measures (for both water and air) should be applied in accordance with Defra guidelines <https://www.gov.uk/guidance/pollution-prevention-for-businesses> throughout the construction phase and where appropriate, method statements should be followed for high-risk activities, such as refuelling and use of concrete. With these measures in place, there would be no adverse effects on the Marine SAC as a result of the potential spread of dust, sediments or other water or air borne pollutants.

Considering the above, the development proposal doesn't need a Habitats Regulations Assessment. The project should take measures to control pollution during construction whether or not the Marine SAC feature is present, and giving the scale of the proposed development and the distance of the nearest Marine SAC feature is over 200m from the site, I consider an Appropriate Assessment is not required for this development proposal.

**Marine Management Organisation:** Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.

The MMO has, in principle, no objections to the application however the following conditions should be applied in accordance with the Marine and Coastal Act 2009 Part 4 Chap 1.

Any works that take place below Mean High Water Springs (MHWS) require a marine licence and the applicant should apply online using the following website. This includes:

- 7) To construct, alter or improve any works within the UK marine licensing area either—
  - (a) in or over the sea, or
  - (b) on or under the sea bed.

The Marine Case Management System (MCMS) can be used by the applicant (self-service) to determine if a marine license would be required.

The Marine Management Organisation (MMO) is a non-departmental public body responsible for the management of England's marine area on behalf of the UK government. The MMO's delivery functions are; marine planning, marine licensing, wildlife licensing and enforcement, marine protected area management, marine emergencies, fisheries management and issuing European grants.

### Marine Licensing

Activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009. Such activities include the construction, alteration or improvement of any works, dredging, or a deposit or removal of a substance or object below the mean high water springs mark or in any tidal river to the extent of the tidal influence. You can also apply to the MMO for consent under the Electricity Act 1989 (as amended) for offshore generating stations between 1 and 100 megawatts in England and parts of Wales. The MMO is also the authority responsible for processing and determining harbour orders in England, and for some ports in Wales, and for granting consent under various local Acts and orders regarding

harbours. A wildlife licence is also required for activities that that would affect a UK or European protected marine species.

### Marine Planning

Planning documents for areas with a coastal influence may wish to make reference to the MMO's licensing requirements and any relevant marine plans to ensure that necessary regulations are adhered to. For marine and coastal areas where a marine plan is not currently in place, we advise local authorities to refer to the Marine Policy Statement for guidance on any planning activity that includes a section of coastline or tidal river. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the Marine and Coastal Access Act and the UK Marine Policy Statement unless relevant considerations indicate otherwise. Local authorities may also wish to refer to our online guidance and the Planning Advisory Service soundness self-assessment checklist.

**Paignton Harbour Master:** No objection to the proposed development. A mobile crane is used twice a year; October to lift some boats out for storage, and again in March to lift them back in. The location of the proposed terrace will have zero impact on this operation based on where the boats need to be lifted to and from. It maybe that in the past the crane has been located in such a position that one of the stabilisation legs would have gone were the proposed store under the new balcony will be, but they will just need to go further up the quay and use a longer reach, or alternatively a smaller crane could be used.

Paignton harbour has traditionally offered winter storage to our customers and we earn revenue from it. However we have no obligation to provide this and it might be the case that we cease storing the larger commercial vessels on the quay if the size of the crane is an issue. However having witnessed the crane in operation for the last eight years I cannot see any problem with the proposed terrace.

No operational issues with the seating plan they have submitted.

**Paignton Neighbourhood Forum:** The Forum has considered the above planning application and has the following comments:

Policy PNP3 of the Neighbourhood Plan seeks to encourage more tourists to the harbour area whilst at the same time ensuring the heritage features are retained and the current mix of uses as a working harbour are able to continue.

1. The seating areas shown located outside of the building appear not to be within the boundary of the application area and have the potential to conflict significantly with other harbour activities such as the operation of boat hire

bookings where space for individual operators needs to be retained. The area involved also forms part of the South West Coast Path route that is subject to Policy SS6.3 of the Adopted Torbay Local Plan.

2. It is not clear from the submitted plans where the proposed condenser units will be located. It would not be appropriate for these to be placed on any of the elevations or roof line of this important building.

3. It is not clear where the replacement storage facilities will be provided that will be lost to other harbour users under the first floor seating area proposed at the eastern end of the building. The impact of this on ensuring the retention of a working harbour appears not to have been considered.

4. Whilst the existing external window shutters are decorative they have been in place a very long time and do add to the character of the building. If it is not possible to retain the existing shutters, their replacement with similar detailing would be appropriate.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Twenty neighbour notification letters were sent to those neighbours which the development could affect. Six letters of objection have been received from four parties, including the Paignton Neighbourhood Forum. Concerns raised relate to noise, odour, antisocial behaviour, hours of use, wildlife, impact on listed building and overdevelopment.

### **Relevant Planning History**

P/2006/1341: Repointing Of Seaward North Sandstone Elevation. Approved 04/10/2006.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Highways
5. Ecology
6. Flood risk

#### **1. Principle of development**

The proposal would result in the extension of an existing restaurant use into parts of an existing building that are currently used for storage, and two shops. As such, the proposal would result in the change of use of part of an existing building.

The site is located within the Paignton Seafront, Harbourside and Green Core Tourism Investment Area (CTIA) as defined by Policy TO1 of the Local Plan. Policy TO1 states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It is also stated that the Council wishes to see a wider range of new and refurbished facilities and services, with investment being focussed in CTIAs.

The first-floor restaurant has been vacant for some time, along with the two ground floor shops accessed by the underpass. The proposed development seeks to refurbish and reconfigure the existing building to create a two-storey restaurant, and a small coffee shop/takeaway. It is considered that the proposal would improve the appearance and condition of the existing, listed building and produce a high quality tourist facility that would assist in regenerating the Paignton Harbourside area. As such, the proposal complies with Policy TO1 of the Local Plan.

A restaurant (Class A3 use) is designated as a main town centre use in the Glossary of the National Planning Policy Framework (NPPF). The proposal would serve to extend an existing restaurant use at the site, replacing retail and storage uses. Paragraph 24 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre, however, this test should be balanced against other benefits of the proposal. As discussed, the proposal would extend an established restaurant use in close proximity to the town centre, and would serve to enhance the attractiveness of part of the core tourism investment area, in addition to providing jobs and securing the long-term use of a listed building. The proposal is considered to be consistent with the objectives of Policies TC3 and TO1 of the Local Plan, along with the guidance contained in the NPPF.

The site is designated within Paignton Harbour as defined by Policy PNP3 of the Paignton Neighbourhood Plan. Policy PNP3 states improvement of the harbour will be encouraged and development proposals supported where they will, amongst other things:

- a) Retain the heritage features and 'quaintness' of the harbour;
- b) Continue the mix of traditional use as a working harbour, including commercial and residential accommodation;
- c) Attract more tourists.

As discussed, the proposal would retain and help to sustain a listed building; it would provide an enhanced restaurant use with benefits for the local economy and the tourism industry; and would allow for the continued use of a working harbour. The proposal is considered to be in accordance with Policy PNP3.

The Paignton Neighbourhood Forum have raised concerns that it is unclear where the replacement storage facilities will be provided that will be lost to other harbour users that currently exist on the ground floor, eastern end of the building. The Paignton Neighbourhood Forum states that the impact of this on ensuring the retention of a working harbour appears not to have been considered.

Comments received from the Paignton Harbour Master are clear that the proposed development would not prevent the continuation of a working harbour and that the provision of storage facilities is at their discretion.

The proposal is considered acceptable in principle, having regard to Policies TC3, TO1,

## **2. Economic Benefits**

Policy SS4 of the Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it enables expansion and diversification of the economy of the Bay. The Local Plan seeks to promote growth in sectors that are particularly important in Torbay, including tourism, hotel and catering. The proposed development would regenerate and refurbish the existing building providing a larger restaurant to accommodate additional capacity whilst serving as a tourist facility on Paignton Harbourside.

Policy SS11 of the Local Plan explains that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle.

Policy TC5 of the Local Plan states that the Council supports, in principle, development that helps create a vibrant, diverse evening and night-time economy within the town centres, seafront and harbour areas of the Bay.

The proposal is considered to be consistent with the objectives of these policies.

## **2. Visual amenity**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy PNP1(c) Design Principles of the Paignton Neighbourhood Plan states that

development proposals should where possible and appropriate to the scale and size of the proposal to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

Given the proposal's siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality. Objectors have raised concerns regarding the impact the proposed development would have on the listed building, particularly in relation to the existing external window shutters.

The building is located in the Roundham & Paignton Harbour Conservation Area and is a Grade II Listed Building. Policy HE1 Listed Buildings of the Local Plan states that development proposals should have special regard to the desirability of preserving any listed building and its setting, or any features of special architectural or historic interest which it possesses. Proposals for the alteration or extension of any listed building will not be permitted if the character of the building would be adversely affected. Policy SS10 Conservation and the Historic Environment of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them.

The Council's Interim Heritage Advisor has stated whilst the building has a considerable history the historic merit lies in its historic use and its architecturally functional design. Attempts have been made to negotiate changes to the original submission, which sought to make improvements and assisted in resolving some design concerns, which has achieved an acceptable balance between the commercial operation of the building whilst maintaining the building's special merit. For instance, the treatment to the area of the existing gift shopfront has been an issue of debate, however, the shopfront in itself whilst part of the story of the building is not intrinsic in terms of the building's architectural or historic merit. The treatment of this area with timber board should at least serve to echo the buildings original purpose, to ensure this a planning condition will be employed.

Should planning permission be granted, it is recommended that conditions be imposed to secure details of the proposal's fenestration. It is concluded that, on balance, whilst the proposal involves a number of interventions these do not cumulatively cause significant harm to the building's overall significance as a listed building, especially accounting for the fact that the proposed use of the building should ensure it has an available longer term future. It also considered that the proposal would preserve the character and appearance of the Roundham & Paignton Harbour Conservation Area. To the extent that there would be any harm to the listed building, it is considered to be minor and less than substantial, and public benefits (as outlined earlier in this report) outweigh the identified harm.

A planning condition will be employed to secure details of the proposed windows and door details prior to their installation to ensure that the materials enhance and conserve the Listed Building and the Roundham & Paignton Harbour Conservation Area and to ensure that the proposal complies with the requirements of the Planning (Listed Building & Conservation Area) Act 1990.

Subject to the planning conditions mentioned, the proposal is considered to comply Policies DE1, HE1 and SS10 of the Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan, and the guidance contained in the NPPF.

### **3. Residential amenity**

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors have raised concerns with regards to noise, anti-social behaviour, odour and the hours of use for the proposed development. There are residential dwellings to the south-west of the site, with the nearest being some 20 metres from the proposed outdoor seating area.

Concerns regarding anti-social behaviour have been raised with regards to the underpass, however, it should be noted that this is an existing public right of way and therefore there is natural surveillance of this area by members of the public passing through. The Designing Out Crime Police Officer raises no objection to the scheme.

With regards to noise and the hours of use for the facility, the Council's Senior Environmental Health Officer has recommended restrictions in relation to hours of use. Conditions are recommended to limit the use of the outdoor seating areas, and to secure details of the proposed extract/ventilation system to ensure that the proposal does not cause unacceptable odour or noise nuisance. A condition is recommended to secure a construction management plan to prevent unacceptable harm to local and residential amenity during the construction phase of the development.

Subject to the use of the aforementioned conditions, given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to local amenity, or the amenities of neighbours, in terms of potential nuisances, outlook, privacy, or access to natural light. The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

### **4. Highways**

Policy DE3 Development Amenity of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to

ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 Parking Requirements of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development.

The proposal would not include any parking spaces but is located in close proximity to good public transportation links, public car parks, and local amenities with Paignton Town Centre and waterfront being located nearby. The Council's Highways Engineer raises no objections.

The proposal does not alter any public right of way. The Council's Strategic Transport Officer has stated that the development should be appropriately lit and kept clear of obstructions as should any access way to the public ferry embarkation point and access for boats on trailers etc. to the slip way. An objector has raised concerns regarding the proposed outdoor seating areas shown located outside of the building and the possibility of such having the potential to conflict significantly with other harbour activities such as the operation of boat hire bookings where space for individual operators needs to be retained. The Harbour Master has stated that there are no operational issues with the submitted outdoor seating plan.

The Council's Strategic Transport Officer has stated that there should be adequate provision of secured and covered cycle parking for staff and customers. A planning condition is recommended to require the submission of details relating to cycle storage, along with the provision of a proportionate Travel Plan with 'SMART' targets seeking 30% modal shift for staff and customers.

Given the sustainable location of the proposal, with the provision of a proportionate Travel Plan and the provision of secure and covered cycle parking, which can both be secured by way of planning condition, the proposal is considered to accord with Policies TA2 and TA3 of the Local Plan.

## **5. Ecology**

The site is within 250 metres of Roundham Head SSSI. The Council's Strategic Appraisal Officer has stated that the proposed development does not overlap with any European designated site and it is not within the South Hams SAC sustenance zone or strategic flyway as designated by Natural England. The interrogation of Magic Maps shows a component of the Lyme Bay and Torbay Marine SAC reefs feature is approximately 250m, at its nearest point, from the site and there are no sea caves present close to the site.

The Council's Strategic Appraisal Officer has advised that the appropriate pollution control measures for both water and air should be applied in accordance with Defra guidelines throughout the construction phase and where appropriate, method statements should be followed for high-risk activities, such as refuelling and use of concrete. With these measures in place, there would be

no adverse effects on the Marine SAC as a result of the potential spread of dust, sediments or other water or air borne pollutants. It is concluded that the proposed development does not require a Habitats Regulations Assessment and an Appropriate Assessment is also not required for this development proposal.

The proposal complies with Policy NC1 of the Local Plan.

## **6. Flood risk**

Policy ER1 Flood Risk of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy PNP1(i) Surface Water of the Paignton Neighbourhood Plan states that developments will be required to comply with all relevant drainage and flood risk policy.

The site is located within Flood Zone 3a and is accompanied by a Site Specific Flood Risk Assessment. South West Water raise no objection to the scheme. The Council's Drainage Engineer has raised no objections to the proposal.

The guidance contained in the NPPF requires the Local Planning Authority to apply the Sequential Test to the proposal, where the objective is to direct development towards land at the lowest risk of flooding. The proposal would result in the refurbishment of a former restaurant and removal of storage units to the ground floor to provide a two storey restaurant which is located within Flood Zone 3a. It is considered that the proposal would result in public benefits with the site in question being used to provide an improved tourist facility within the Core Tourism Investment Area. Although a new restaurant may be sited elsewhere, within areas at lower risk of flooding, in this case (i.e. improving an existing restaurant in a prominent location close to the seafront and within the Core Tourism Investment Area) there are not considered to be more appropriate sites within Flood Zones 1 or 2 that could accommodate the development, and it is therefore considered that it passes the Sequential Test.

The proposed development would increase the flood-risk vulnerability of the ground floor to "more vulnerable". According to the national planning guidance, more vulnerable uses can be acceptable in Flood Zone 3a subject to the Exceptions Test, and the Local Planning Authority is satisfied that the proposed development would amount to an exceptional case given its economic and regeneration benefits, and that the development can be made sufficiently safe. The Council's Drainage Engineer has stated that the proposed flood mitigation measures detailed in the flood risk assessment are acceptable.

Subject to a condition to secure the proposed mitigation measures, the proposal is considered to be acceptable, having regard to Policy ER1 of the Local Plan, Policy PNP1(i) of the Paignton Neighbourhood Plan, the NPPF, and the PPG.

## **8. Other Considerations**

The Marine Management Organisation has stated that they raise no objections in principle. An informative will be imposed, should planning permission be given, drawing the applicant's attention to the possible need for a marine licence.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Local Plan, the Paignton Neighbourhood Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

#### **Details of Extract/Ventilation System:**

Prior to the first use of the development hereby approved, details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including the

method of construction, odour control measures as appropriate, and noise levels, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before the use hereby permitted commences and thereafter shall be permanently retained.

Reason: These details need careful consideration and formal approval to safeguard the amenity of adjoining properties and to protect the general environment. In the interests of residential amenity and in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

### **Window and Door Details**

Prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority, which seek to respond to the positive aspects of the local prevailing character of the area:

- Sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Harbour Light Restaurant Listed Building and the Roundham & Paignton Harbour Conservation Area in accordance with Policies DE1 Design, HE1 Listed Buildings and SS10 Conservation and the Historic Environment of the Adopted Torbay Local Plan 2012-2030.

### **Travel Plan**

Prior to the development hereby approved being brought into use, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted information shall provide details of the proposed means of encouraging the use of sustainable modes of transportation, for staff and customers, along with measures for regular monitoring and review. The use hereby approved shall be undertaken in accordance with the approved details.

Reason: In the interests of road safety and sustainability, and in order to accord with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030.

### **Flood Risk Assessment**

The development hereby approved shall be undertaken in full accordance with the mitigation measures contained in the flood risk assessment referenced "0768 A" received 27<sup>th</sup> February 2019, and shall be retained as such thereafter.

Reason: In the interests of flood safety and in accordance with Policies ER1 and

ER2 of the Adopted Torbay Local Plan 2012-2030.

### **Construction Method Statement**

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason: This information is required prior to commencement to safeguard the amenity of the locality in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

### **Bin Storage**

Prior to the first use of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 Design of the Adopted Torbay Local Plan 2012-2030.

### **Bicycle Storage**

Prior to the first use of the development hereby permitted, provision shall be made for the storage of bicycles according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 Development Access and TA3

Parking Requirements of the Adopted Torbay Local Plan 2012-2030.

### **Hours of Use**

The development hereby approved, except for the outdoor seating sited to the west of the building, shall not be open to customers outside of the following times: 0800 to 2300 Sunday to Thursday, and 0800 to midnight Friday to Saturday. The outdoor seating area to the west of the building shall not be open to customers outside of the following times: 0800 to 2100 Monday to Sunday.

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

### **External Materials**

Prior to the use of any new external building materials, including cladding, stonework and mortar, the proposed materials (including samples) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Harbour Light Restaurant Listed Building and the Roundham & Paignton Harbour Conservation Area in accordance with Policies DE1 Design, HE1 Listed Buildings and SS10 Conservation and the Historic Environment of the Adopted Torbay Local Plan 2012-2030.

### **Marine Licence - Informative**

Please be aware that any works within the Marine area require a licence from the Marine Management Organisation. It is down to the applicant themselves to take the necessary steps to ascertain whether their works will fall below the Mean High Water Springs mark.

### **Appropriate Pollution Control Measures - Informative**

The applicant is reminded of their obligations in relation to pollution prevention and control, which is covered by separate legislation. Appropriate pollution control measures (for both water and air) should be applied in accordance with Defra guidelines <https://www.gov.uk/guidance/pollution-prevention-for-businesses>

### **Relevant Policies**

DE1 - Design  
DE3 - Development Amenity  
HE1 - Listed Buildings  
ER1 - Flood Risk

ER2 - Water Management  
NC1 - Biodiversity and Geodiversity  
SS4 - The Economy and Employment  
SS6 - Strategic Transport Improvements  
SS10 - Conservation and Historic Environment  
SS11 - Sustainable Communities  
TA2 - Development Access  
TA3 - Parking Requirements  
TC3 - Retail Development  
TC5 - Evening and Night Time Economy  
TO1 - Tourism, Events and Culture

PNP1(c) - Design Principles  
PNP1(e) - Commercial Development  
PNP1(i) - Surface Water  
PNP3 - Paignton Harbour

**Application Number**

P/2019/0238/LB

**Site Address**

Harbour Light Restaurant  
North Quay  
Roundham Road  
Paignton  
Torbay

**Case Officer**

Ross Wise

**Ward**

Roundham with Hyde

**Executive Summary/Key Outcomes**

The application proposes internal and external alterations to a harbour-side building located at North Quay, Paignton, which contains restaurant and retail units, which are currently vacant, along with storage associated with the harbour. The proposal is for the extension of the restaurant use, which would fill the whole of the building, and would include the addition of an external terraced area at first-floor level, external store areas attached to the east of the building, external seating areas, along with new condenser units, structural alterations and changes to the fenestration.

The proposal is considered to be acceptable in terms of the impact on the listed building. The proposal meets the requirements of the Torbay Local Plan and the Paignton Neighbourhood Plan.

**Recommendation**

That Listed Building Consent is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

As the proposed development is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections, the Council's constitution requires that the application be referred to the Planning Committee for determination.

**Statutory Determination Period**

29<sup>th</sup> April 2019.

**Site Details**

The application site comprises a Grade II listed building, containing vacant restaurant and retail units along with storage uses associated with the harbour. The listing states that the building was likely to have been used as fish cellars and net stores associated with the fishing industry, which then later, in part, came into use as a restaurant with some storage use associated with ships in the harbour.

The building has two storeys.

The site is located within Flood Zones 2 and 3. The site is also within the designated Roundham and Paignton Harbour Conservation Area. There are a number of Grade II Listed Buildings within the immediate vicinity of the site. The site is within 250 metres of Roundham Head SSSI. The site is not located within Paignton Town Centre, however it is in close proximity.

### **Detailed Proposals**

The application proposes internal and external alterations to the application building with the creation of a restaurant across both floors, including a small coffee shop/takeaway to the ground-floor. Internally, the proposal would involve the removal of six stores and two shops at the ground-floor level and the removal of one store area at first-floor level.

The external alterations include a ground-floor extension off the southern elevation to accommodate storage including refuse storage; the addition of a first-floor, outdoor terraced area, also off the southern elevation; the removal of the existing shutters and awnings; the insertion of a serving hatch to the north-western elevation at ground-floor level; the replacement of windows, doors and downpipes; the blocking up of a number of doors; and associated works. The proposal would include outdoor seating areas alongside the building at ground-floor level, as well as on the proposed first-floor terrace. There would also be repairs to the historic fabric of the building.

This application for listed building consent is only concerned with works affecting the fabric of the building, and complements the associated application for planning permission.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Paignton Neighbourhood Plan.

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice

- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary Of Consultation Responses**

**Historic England:** On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation adviser.

**Interim Heritage Advisor:** The building is located in the Roundham & Paignton Harbour Conservation Area and is a Grade II Listed Building. The building appears from the historic records to have started life as a fish cellar and net store. The reports suggest that due to the nature of the historic use of the building as a store the majority of the historic fabric seems to be limited to the existing rubble wall build up and exposed timber roof structure.

In my view whilst the building has a considerable history the historic merit lies in its historic use and its architecturally functional design. I am aware that the case officer has negotiated changes to the original submission which has served to make improvements and helped resolve some of the concerns regarding the details, and achieved an acceptable balance between the commercial operation of the building whilst maintaining the building's special merit. The treatment to the area of the existing gift shopfront has been an issue of debate, however, the shopfront in itself whilst part of the story of the building is not intrinsic in terms of the buildings architectural or historic merit. The treatment of this area with timber board should at least serve to echo the buildings original purpose.

It will be important to carefully condition any permission including to ensure that details of the new fenestration is submitted for approval.

On balance whilst the proposal involves a number of interventions these do not cumulatively cause significant harm of the building's overall significance as a listed building, especially accounting for the fact that the use of the building should ensure it has an available longer term future. I also consider that the alterations are considered to preserve the character and appearance of the Roundham & Paignton Harbour Conservation Area.

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advert  
7 objections have been received from 4 parties. Issues raised:

- Impact of noise and smells.
- Opening hours.
- Lack of privacy.
- Extent of seating area.

- Overdevelopment.
- Impact on harbour businesses.
- Potential for vandalism in the underpass.
- Location of Air conditioning units.
- Nuisance from Gulls.

### **Relevant Planning History**

P/2006/1341: Repointing Of Seaward North Sandstone Elevation. Approved 04/10/2006.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

#### *Impact on heritage asset*

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy SS10 states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Policy HE1 states that development proposals should have special regard to the desirability of preserving any listed building and its setting, or any features of special architectural or historic interest which it possesses. Policy PNP3 of the Paignton Neighbourhood Plan states that improvement on the harbour and frontage to the harbour will be encouraged and development proposals supported subject to other policies within the Paignton Neighbourhood Plan.

The building's significance is derived from its associated use with the harbour as its probable historic use as a fish cellar and net store. The building presents an industrial architectural character that is still visible, even after the conversions of the upper floor and the creation of the underpass, connecting the harbour with the south-west coast path. In terms of its evidential value, there is likely to be little due to the previous conversion and its continuing use as storage.

On inspection of the site, much of the exterior is in what seems to be a relatively good condition. The exterior render, where rendered, shows little sign of decay or blistering. Given its painted finish it was unable to determine the materiality of the current render. Red breccia stone is exposed externally on the north elevation on the seaward side and internally within many of the ground level storage units. There is a varying degree in the internal quality of the storage units, due to their variable uses, with many requiring repair of the pointing, stonework and render.

The current Georgian style windows partially fill what is likely to have been the historic openings used to access the upper floors of the building. Painted shutters, proportionate to the size of the current windows, are present on the elevations but present no function and are purely ornamental, likely to have been installed in C20. Within the underpass, connecting the harbour to the Eastern Esplanade and the Seafront to the North, are two vacant shops and their frontages. These were installed in the late 1930s and are not an original feature of the building. Existing rainwater goods are painted in a vibrant blue colour to match the windows and shutters.

The application proposes internal and external alterations to the application building with the creation of a restaurant across both floors, including a small coffee shop/takeaway to the ground-floor. Internally, the proposal would involve the removal of six stores and two shops at the ground-floor level and the removal of one store area at first-floor level. The external alterations include a ground-floor extension off the southern elevation to accommodate storage including refuse storage; the addition of a first-floor, outdoor terraced area, also off the southern elevation; the removal of the existing shutters and awnings; the insertion of a serving hatch to the north-western elevation at ground-floor level; the replacement of windows, doors and downpipes; the blocking up of a number of doors; and associated works. The proposal would include outdoor seating areas alongside the building at ground-floor level, as well as on the proposed first-floor terrace.

As there seems to be little evidence of the original layout, as much as possible of the existing fabric should be retained and where the rubble wall is deteriorating and requires repair, this should be undertaken in an appropriate manner to ensure there are no adverse impacts on the significance of the listed building. Where the removal of sections of the fabric are proposed, they have been subject to scrutiny and negotiation to ensure their removal is appropriate and necessary. A condition will be used to ensure the appropriate materials are used where any repairs to the existing stonework, pointing and render are required.

The removal of the shutters and painting of the rainwater goods, is considered to result in an improvement in the appearance of the listed building. Additionally the upgrade or removal of poor quality non-original elements from building are considered to have a similar effect. For example, the steel access staircase to the south elevation at the eastern end of the building. The introduction of the terrace area as an extension of the eastern end of the building remains subservient to the existing structure as it does not project beyond its building line and creates a stepping down of built elements. The palette of materials proposed for the construction of the terrace are similar to that of the existing building. However, the proposed terrace presents a modern touch to the nature of its design with structural steel columns, toughened glass balustrades and stained timber louvered panels. This specific approach clearly identifies the terrace as a modern addition, enabling it to be clearly read as such, without the creation of a pastiche design.

The Council's Interim Heritage Advisor has gone on to state that whilst the building has a considerable history the historic merit lies in its historic use and its architecturally functional design. Attempts have been made to negotiate changes to the original submission, which sought to make improvements and assisted in resolving some design concerns, which has achieved an acceptable balance between the commercial operation of the building whilst maintaining the building's special merit. For instance, the treatment to the area of the existing gift shopfront has been an issue of debate, however, the shopfront in itself whilst part of the story of the building is not intrinsic in terms of the building's architectural or historic merit. The treatment of this area with timber board should at least serve to echo the building's original purpose, to ensure this a planning condition will be employed.

The Council's Interim Heritage Advisor has recommended conditioning details of new fenestration and concludes that on balance whilst the proposal involves a number of interventions these do not cumulatively cause significant harm to the building's overall significance as a listed building, especially accounting for the fact that the proposed use of the building should ensure it has an available longer term future.

Should listed building consent be granted, a planning conditions should be employed to secure details of the proposed windows and door, and works to the fabric of the building, to ensure that the materials enhance and conserve the Listed Building and to ensure that the proposal complies with the requirements of the Planning (Listed Building & Conservation Area) Act 1990.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to

the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

## **EIA/HRA**

### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusion**

The proposal is considered acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

#### **Window and Door Details**

Prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority:

- Sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Harbour Light Restaurant Listed Building in accordance with Policy HE1 of the Torbay Local Plan.

#### **Materials**

Prior to the use of any building materials that would be used for the repair of the historic fabric of the building, or within the external appearance of the building, including cladding, stonework and mortar, the proposed materials (including samples where appropriate) shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall thereafter be undertaken in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Harbour Light Restaurant Listed Building in accordance with Policy HE1 of the Torbay Local Plan.

### **Informative(s)**

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for listed building consent.

### **Relevant Policies**

DE1 - Design  
SS10 - Conservation and Historic Environment  
HE1 - Listed Buildings  
PNP3 – Paignton Harbour