



Friday, 1 March 2019

DEVELOPMENT MANAGEMENT COMMITTEE

A meeting of **Development Management Committee** will be held on

Monday, 11 March 2019

commencing at **2.00 pm**

The meeting will be held in the Riviera International Conference Centre, Chestnut Avenue, Torquay, TQ2 5LZ

Members of the Committee

Councillor Kingscote (Chairman)

Councillor Barnby
Councillor Lewis (B)
Councillor Manning

Councillor Morey
Councillor Pentney
Councillor Tolchard

A prosperous and healthy Torbay

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

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DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Apologies for absence**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
2. **Minutes** (Pages 4 - 7)
To confirm as a correct record the Minutes of the meeting of this Committee held on 11 February 2019.
3. **Declarations 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 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.)
4. **Urgent Items**
To consider any items that the Chairman decides are urgent.
5. **Torquay Pavilion and Marina, Vaughan Parade, Torquay (P/2015/0961& P/2015/0962)** (Pages 8 - 113)
This report relates to Major Planning Application P/2015/0961/MPA and Listed Building Consent application P/2015/0962/LB. It is an update to the resolutions of the Development Management Committees of 27.02.2017 and 08.05.2017.
6. **Grange Court Holiday Centre, Grange Road, Paignton (P/2018/0579)** (Pages 114 - 127)
Use of land for the addition of 35 static holiday lodge caravans.
7. **Land South Of 27 Empire Road (P/2018/0901)** (Pages 128 - 141)
Formation of two detached two-storey dwellings (Revised plans

received 29/01/19).

8. **Curtilage Of 1 Laura Grove, Paignton (P/2018/1136)** (Pages 142 - 155)
Formation of dwelling & garage.
9. **Barton County Junior And Infant School , Barton Hill Road, Torquay (P/2018/1211)** (Pages 156 - 165)
Formation of a new nursery building with two new classrooms and associated facilities.
10. **Exmouth View Hotel, St Albans Road, Torquay (P/2018/1283)** (Pages 166 - 187)
Demolition of existing hotel and construction of twelve apartments, two townhouses and associated car parking.
11. **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 before 11 am on the day of the meeting.
12. **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.



Minutes of the Development Management Committee

11 February 2019

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Brooks, Lewis (B), Manning, Pentney and Thomas (D)

(Also in attendance: Councillors Lewis (C) and O'Dwyer)

37. Apologies for absence

An apologies/Apologies for absence were received from Councillor Morey.

It was reported that, in accordance with the wishes of the Conservative Group, the membership of the Committee had been amended for this meeting by including Councillors Brooks and Thomas (D) instead of Councillor Tolchard and Winfield.

38. Minutes

The Minutes of the meeting of the Development Management Committee held on 14 January 2019 were confirmed as a correct record and signed by the Chairman.

39. Land North of Totnes Road, Collaton St Mary Paignton P/2017/1304

The Chairman confirmed that the application had been withdrawn.

40. Land to The Rear of 190 Northfields Lane, Brixham P/2018/1009

The Committee considered an application for the construction of two detached dwellings, each with integral double garages and garden areas.

Prior to delivery of the presentation a verbal update was provided by the Planning Officer following late receipt of comments from the Ward Member (not in attendance) relating to the recommendation. These included:

- a) incorrect naming of the Ward was acknowledged and verbally corrected;
- b) reference to the attributable weight to Policy E2 of the Brixham Peninsula NP was referred to, and Members were directed to the section of the recommendation titled 'Principle of Development'; and
- c) planning Officers satisfied that appropriate weight was given to the Neighbourhood Plan.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Nick Jackson addressed the Committee in support of the application.

Resolved:

Approved subject to the final drafting of conditions, including those set out in the submitted report, and the resolution of any outstanding matters being delegated to the Assistant Director for Planning and Transport.

41. Former Torwood Conservative Club, 28 Parkhill Road, Torquay P/2018/1118

The Committee considered an application for the demolition of a section of the building, formation of parking space, replacement roof material, installation of balustrading and gates.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website.

Resolved:

Approved subject to the final drafting of conditions, including those set out in the submitted report, and the resolution of any outstanding matters being delegated to the Assistant Director for Planning and Transport.

(Note: In accordance with the Local Code of Good Practice – Members and Council Officers Involved in the Planning Process, Councillor O'Dwyer withdrew from the meeting room prior to members' questions, debate and vote on the application.)

42. Former Torwood Conservative Club, 28 Parkhill Road, Torquay P/2018/1119

The Committee considered an application for a listed building application to demolish a section of the building, formation of parking space, replacement roof material, installation of balustrading and gates.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website.

Resolved:

Approved subject to the final drafting of conditions, including those set out in the submitted report, and the resolution of any outstanding matters being delegated to the Assistant Director for Planning and Transport.

(Note: In accordance with the Local Code of Good Practice – Members and Council Officers Involved in the Planning Process, Councillor O'Dwyer withdrew

from the meeting room prior to members' questions, debate and vote on the application.)

43. Curtilage Of 1 Laura Grove, Paignton P/2018/1136

The Committee considered an application for the formation of a dwelling and a garage.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website. At the meeting Caroline Perry addressed the Committee against the application and Rodney Howes addressed the Committee in support of the application.

Resolved:

That the application be deferred to enable officers to obtain additional information in respect of boundary treatment and levels, including datum levels regarding the ridge height of the existing garage, the height of the proposed patio, the ridge height of the proposed dwelling and the ridge height of the No.1 Laura Grove.

44. Ormonde Cottage, 15 Newton Road, Torquay P/2018/1213

The Committee considered an application for construction of twelve 2-bedroom townhouses.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website. At the meeting Adrian Gillette and Trevor Barfoot addressed the Committee in support of the application.

The Case Officer reported verbally to the meeting that, after considering representations from the applicant's agent, it was accepted that the Gross Internal Area of each dwelling was 72-73s sqm. The Case Officer then recommended to members that Reason for Refusal 02 be amended to exclude any reference to internal living standards.

Resolved:

That the application be refused for the reasons set out in the submitted report with condition 02 being amended as follows:

02. The proposal, due to ~~the limited internal floor areas of each dwelling,~~ the lack of adequate outdoor amenity space, and inadequate parking facilities and limited street parking within the vicinity, would result in a poor residential environment for future occupiers of the dwellings, contrary to Policies H1, DE3 and TA3 of the Torbay Local Plan 2012-2030.

45. Roselands County Primary School, Lynmouth Avenue, Paignton P/2018/1214

The Committee considered an application for formation of new entrance and admin block and conversion of existing building.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website. At the meeting Clare Talbot and Chris O'Connor addressed the Committee in support of the application.

Resolved:

Approved, subject to the conditions detailed in the officer report and the completion of a Section 106 Agreement to secure necessary funds towards investigating the implementation of a 20mph zone for the Roselands residential area; and addressing any further material considerations that may come to light being delegated to the Assistant Director of Planning and Transport.

46. Suite Dreams Country Hotel, Steep Hill, Torquay P/2018/1216

The Committee considered an application for the conversion of existing hotel into 10 self-contained apartments, including an increase in ridge level of 400mm, and demolition of rear extension.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website.

Resolved:

Approved subject to the final drafting of conditions, including those set out in the submitted report, and addressing any new material considerations that may come to light being delegated to the Assistant Director for Planning and Transport.

Chairman

Agenda Item 5

Application Number

P/2015/0961/MPA
P/2015/0962/LBC

Site Address

Torquay Pavilion And Marina
Car Park And Office And
Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Robert Brigden

Ward

Tormohun

Executive Summary

This report relates to Major Planning Application P/2015/0961/MPA and Listed Building Consent application P/2015/0962/LB. It is an update to the resolutions of the Development Management Committees of 27.02.2017 and 08.05.2017; the position report completed by officers in June 2018; and the outcome of judicial review proceedings where planning permission P/2015/0961/MPA and listed building consent P/2015/0962/LBC were quashed. The previous reports are appended for information, as detailed below, and this report should be read alongside those. Taken together, this report and those previously prepared, describe the assessment exercise in relation to these applications. For the reasons set out below, it is recommended that Planning Permission and Listed Building Consent be refused.

Recommendation

That the applications be refused for the following reasons;

P/2015/0961/MPA

1. In the absence of robust, up-to-date information concerning the proposal's viability, economic benefits, and to demonstrate that it would constitute enabling development, its scale and impact on heritage assets are not sufficiently justified. The proposal is therefore considered to be contrary to Policies DE1, DE4, HE1 and SS10 of the Local Plan, and the guidance contained in the NPPF.
2. In the absence of an up-to-date and fully-evidenced Independent Viability Assessment (IVA), along with a fully-justified legal argument to demonstrate that the proposed Section 106 agreement is lawful, there is insufficient information to demonstrate that the proposal is in accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document and Regulation 122 of the CIL Regulations 2010.
3. In the absence of up-to-date ecological surveys and assessment information, it is not possible for the Council to undertake the necessary screening and possible assessment exercises in accordance with the Habitats Regulations, and therefore to conclude whether or not the proposal would have acceptable effects in relation to ecology. As such, the proposal is considered to be contrary to Policy NC1 of the Local Plan, and the guidance contained in the NPPF.

4. The proposal would result in the development of Cary Green, which is designated as a Local Green Space in the Torquay Neighbourhood Plan. The LPA does not have evidence of very special circumstances which would justify this part of the development. As such, the proposal is contrary to Policy TE2 of the Torquay Neighbourhood Plan.

P/2015/0962/LB

1. In the absence of more robust information concerning the proposal's viability, economic benefits, and to demonstrate that it would constitute enabling development, its impact on the character and fabric of the Grade II Listed Pavilion is not considered to be adequately justified. The proposal is therefore considered to be contrary to Policy HE1 of the Local Plan, and the guidance contained in the NPPF.

Site Description

The application site flanks the western side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.

It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.

The Pavilion is Grade II listed. Numbers 3-15 Vaughan Parade, the adjacent terrace, is Grade II listed, as is the Cary Estate Office on Palk Street and 1 Palk Street which overlook Cary Green. The quay walls and the Fish Quay which is to the immediate south of the application site are also Grade II listed.

The Grade I listed St Johns Church sits on the nearby hillside which forms backdrop to the harbour and overlooks the site. Part of the application site lies within Princess Gardens, a Grade II entry in the Register of Parks and Gardens. The registered Garden extends to the west of the application site and includes two further (Grade II) listed structures, the Fountain and the War Memorial.

Currently, the MDL car park site comprises a semi basement and top deck car park providing 235 car parking spaces for the associated Marina. The lower level is normally used exclusively by MDL berth-holders with the upper deck often used for public pay and display purposes. The car park forms the western edge of the harbour walkway and includes, at the northern end, retail and catering outlets with associated seating looking out over the inner harbour. It otherwise presents an inactive frontage to the harbour.

The Pavilion, constructed as a theatre in 1911, has been vacant for several years having previously been in use as a small specialised retail outlet and is now in a very poor structural condition. This largely arises due to corrosion of the innovative steel frame used in its construction and is a common problem in other similar buildings of this era.

Cary Green, a public open space, was laid out in its current form following the construction of the Fleet Walk Shopping Centre in the 1980's comprising a mix of hard and soft landscaping. It is overlooked on three sides by listed buildings, The Pavilion to the south, the Cary Estate Office and 1 Palk Street to the north and 3-15 Vaughan Parade to the east. Cary Green is designated in the emerging Torquay Neighbourhood Plan as a Local Green Space. To the north west of the open space lies the Ziggurat, a rather unappealing means of achieving pedestrian and disabled access from Fleet Walk Car Park to the sea front, which dominates this space. There is a detached single storey building with a pitched roof on the southern side of Cary Green in use as a taxi office.

The site is located within the defined Town Centre and adjacent to the harbour with high levels of pedestrian and vehicular traffic. It is very prominent within the townscape both in short and long distance views.

Description

This report relates to Major Planning Application P/2015/0961/MPA and Listed Building Consent application P/2015/0962/LB. It is an update to the resolutions of the Development Management Committees of 27.02.2017 and 08.05.2017; the position report completed by officers in June 2018; and the outcome of judicial review proceedings where planning permission P/2015/0961/MPA and listed building consent P/2015/0962/LBC were quashed. The previous reports are appended for information, as detailed below, and this report should be read alongside those. Taken together, this report and those previously prepared, describe the assessment exercise in relation to these applications.

The descriptions of the proposals are provided below.

P/2015/0961/MPA - Torquay Pavilion and Marina Car Park and Office and Adjoining Land, Vaughan Parade, Torquay –

Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016), and;

P/2015/0962/LB - Torquay Pavilion, Marina Car Park and Office and adjoining land, Vaughan Parade, Torquay -

Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016).

Background

Development Management Committee 27.02.2017

The relevant committee reports are provided at Appendix A, and the committee minutes are provided at Appendix B.

The committee resolution for planning application P/2015/0961/MPA was that conditional planning permission be granted subject to:

- a. clarification of the impact of 'shadowing' on the amenity of public spaces, and revised plans/clarification of detailed design matters relating to:
 - i. Opportunities for mitigating the impact of the lift shaft;
 - ii. Confirmation that the balconies will be constructed as a continuous curve;
 - iii. Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail;
 - iv. Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building; and
 - v. External plant in relation to listed building
- b. completion of a Section 106 Agreement to include the matters set out in the Minutes of the Development Management Committee held on 27.02.2017; and
- c. final drafting of conditions delegated to the Executive Head of Business Services.

With regard to the Listed Building Consent application P/2015/0962/LB, it was resolved that the Executive Head for Business Services be authorised to agree the extraction and ventilation details and the final drafting of conditions.

First Application for Judicial Review

On 24th March 2017 an application for permission to apply for a Judicial Review of the decision made by the Development Management Committee on 27th February 2017 was made. This application was refused on 20th June 2017 because the matters complained of were criticisms of the planning judgement of the Authority, rather than errors of law in the decision-making process, and any lack of clarity in the original report would be rectified by a further report to committee before the formal permissions were issued.

Development Management Committee 8th May 2017

The relevant update committee reports are provided at Appendix C, and the committee minutes are provided at Appendix B.

The committee resolution for planning application P/2015/0961/MPA was that conditional planning permission be granted subject to:

- a. receipt of the following additional information
 - i. strategy for relocating the traditional railings and form and extent of new railing detail;

- ii. strategy for external and internal plant in relation to the listed building;
 - iii. further details relating to the extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services;
- b. completion of a Section 106 Agreement to include the matters set out in the Minutes of the Development Management Committee held on 27.02.2017; and
 - c. final drafting of conditions delegated to the Executive Head of Business Services.

With regard to the Listed Building Consent application P/2015/0962/LB, it was resolved that the Executive Head for Business Services be authorised to agree the extraction and ventilation details and the final drafting of conditions.

Position Report, June 2018

In June 2018, officers produced a position report, which is provided at Appendix D. The key issues considered related to whether the information submitted was sufficient to meet the requests for further information from the Development Management Committee of 8th May 2017, and whether the details so provided were acceptable. Information was requested in relation to both P/2015/0961/MPA and P/2015/0962/LB as detailed above. It was concluded that the submitted information was acceptable and met the requirements of the committee resolution.

Planning Permission and Listed Building Consent were formally issued on 15th June 2018, following completion of the Section 106 agreement.

Second Application for Judicial Review

On 10th July 2018 the Council received a letter from solicitors acting for an objector to the Pavilion scheme claiming various legal flaws in the way the Authority had handled the applications. After taking the advice of a specialist Town Planning QC the Authority conceded that one ground, namely an incorrect reliance on mitigation measures in relation to the impact of the development on the Marine SAC at habitat screening stage, could not be defended by the LPA. As a result, the Authority agreed to a Consent Order made by the Court on 02.08.2018 which quashed both the planning permission and the listed building consent. As a result of this, both applications have effectively been 're-opened', and are before Members for re-determination.

Request for Further Information from the Applicants

Following the quashing of the planning permission and listed building consents, and in the light of legal advice provided by the Council's advisors, officers wrote to the applicants on 10th October 2018 to request additional information to support their applications and address all grounds of the July 2018 legal challenge. This letter is provided at Appendix E. The legal advice received is that all other grounds of challenge must be fully reviewed and, where possible, addressed before the applications are determined again. It was explained to the applicants that, going forward, any issues which are not satisfactorily addressed have the potential to be reasons for refusal of

the applications. The following information was requested by officers, in addition to any other details that the applicants considered necessary to support their applications.

1. *An up-to-date and fully-evidenced Independent Viability Assessment (IVA). The IVA should not only justify the scale of development and proposed planning obligations, but also address the specific points raised by the Save Cary Green group. Please note that the IVA must take into account the Council's adopted CIL Charging Schedule (May 2017) and accord with the Planning Practice Guidance on viability in planning which was issued on 24th July 2018 <https://www.gov.uk/guidance/viability>.*
2. *An up-to-date and fully-evidenced Employment and Economic Impact Report, including construction costs and jobs created. The contents of this report must correspond with the IVA, for instance, using the same construction and other figures as those detailed in the other document.*
3. *A fully-justified legal argument to support your position that the terms of the proposed Section 106 agreement are lawful and accord with the provisions of Regulation 122 of the CIL Regulations; and/or your proposals to vary the Section 106 agreement so that it does accord with Regulation 122.*
4. *The application will need to be screened in accordance with the Habitats Regulations, to ascertain whether the proposed development should be the subject of a Habitats Regulations Assessment (HRA). If it is concluded that an HRA is necessary, then the Council, as the Competent Authority, will need to complete the appropriate assessment, which would consider whether the proposed development is likely to have significant effects on the Special Area of Conservation (SAC). In order to support the screening exercise and possible assessment, and, in any case, given the passage of time since the application was originally submitted, up to date information about the proposal's ecological effects will need to be submitted for our consideration.*
5. *A fully-justified legal argument to support your position that the proposals are 'enabling development' within the terms of Historic England's guidance, along with the guidance contained in the new NPPF and Planning Practice Guidance.*
6. *Where appropriate, the proposals should address the provisions of the emerging Torquay Neighbourhood Plan.*

The applicant was ultimately given a deadline of 31st January 2019 for the submission of this information, however, no details have been received by planning officers.

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")

Material Considerations

- Emerging Torquay Neighbourhood Plan
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including advice and representations, planning history, and other matters referred to in this report and the appended reports, which this report should be read alongside.

Neighbourhood Plan

Since planning permission and listed building consent were first granted in June 2018, the Torquay Neighbourhood Plan has completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The Neighbourhood Plan cannot be accorded the full weight of an adopted development plan, until it has passed a Referendum, however, it is still a material consideration in the determination of this planning application.

Assessment

The assessment exercise detailed in this report is in addition to, and complements, that already undertaken and detailed in the previous reports, which are appended. The purpose of this report is not to revisit and re-assess all aspects of the proposals, but to update and re-assess those elements which were challenged as part of the legal challenge. The factors requiring further consideration are as follows.

1. *Impact on Character and Heritage Assets*

Policy DE1 states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials and whether they positively enhance the built environment.

Policy DE4 (Building Heights) states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. New development should be constructed to the prevailing height within the character area in which it is located, unless there are sound urban design or socio-economic benefits to justify a deviation from this approach.

The policy goes on to state that new buildings above the prevailing height will be supported where they;

- *Enhance the vitality of an area*
- *Contribute to the regeneration of Torbay*
- *Strengthen the character of an area*
- *Are appropriate in terms of their visual impact*

- *Provide wider urban design or socio-economic benefits*
- *Make a positive addition to the built form, townscape and surrounding landscape; and*
- *Preserve or enhance local and long-distance view, and key vistas.*

Policy SS10 states that developments within conservation areas should preserve or enhance their character. Paragraph 193 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Policy HE1 states that proposals should have special regard to the desirability of preserving any listed building and its setting.

Policy TH8 of the post-examination Neighbourhood Plan states that development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

The applicants have been asked to provide a fully-justified legal argument to support their contention that the proposal would constitute 'enabling development' within the terms of Historic England's guidance, along with the guidance contained in the new NPPF and Planning Practice Guidance. Enabling development is that which would generally be considered harmful, but is deemed acceptable as the benefits it would give rise to would outweigh the identified harm. The information requested has not been provided to date.

The proposal would result in less than substantial, but nevertheless significant, harm to heritage assets, including the Torquay Harbour Conservation Area and the settings of listed buildings. It was previously concluded that public benefits existed to justify the harm identified, in particular, economic and regeneration benefits, and that the proposal needed to be of the scale proposed in order to ensure its viability. However the accuracy of the claimed benefits has been questioned as part of the legal challenge and must be verified if any subsequent permissions are to stand up to further challenges. In the absence of an up-to-date and fully-evidenced Independent Viability Assessment (IVA) and a fully-evidenced Employment and Economic Impact Report, it is considered that there is insufficient information to justify the scale of development proposed, and demonstrate that there are sufficient public benefits to justify the less than substantial harm that the proposal would cause to heritage assets.

In the absence of more robust information concerning the proposal's viability, economic benefits, and to demonstrate that it would constitute enabling development, its scale and impact on heritage assets are not sufficiently justified. The proposal is therefore considered to be contrary to Policies DE1, DE4, HE1 and SS10 of the Local Plan, Policy TH8 of the emerging Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

2. Planning Obligations

It was previously concluded that the scheme would not be able to support the provision of on-site affordable housing, however, a limited financial contribution (the exact amount to be determined towards the completion of the development when the majority of the apartments had sold) towards off-site affordable housing was found to

be financially viable. The officer report of March 2017 recommended that this contribution would be more appropriately directed towards improvements to the public realm surrounding the development. Following the legal challenge, the Council's legal advisors have recommended that a fully justified legal argument be provided by the applicants to demonstrate that their legal agreement, and the obligations it would secure, would be lawful. An up-to-date Independent Viability Assessment would also be required to justify the proposed planning obligations.

In the absence of an up-to-date and fully-evidenced Independent Viability Assessment (IVA), along with a fully-justified legal argument to demonstrate that the current Section 106 agreement is lawful and accords with the provisions of Regulation 122 of the CIL Regulations, there is insufficient information to demonstrate that the proposal is in accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document.

3. Ecology

Policy NC1 seeks to conserve and enhance Torbay's biodiversity and geodiversity through the protection and improvement of terrestrial and marine environments and fauna and flora, commensurate to their importance.

The proposal needs to be screened in accordance with the Habitats Regulations, to ascertain whether the proposed development should be the subject of a Habitats Regulations Assessment (HRA). If it is concluded that an HRA is necessary, then the Council, as the Competent Authority, will need to complete the appropriate assessment, which would consider whether the proposed development is likely to have significant effects on the nearby Marine Special Area of Conservation (SAC). In the absence of up-to-date ecological surveys and assessment information, it is not possible for the Council to undertake the necessary screening and possible assessment exercises, to conclude whether or not the proposal would have acceptable effects in relation ecology. As such, the proposal is considered to be contrary to Policy NC1 of the Local Plan, and the guidance contained in the NPPF.

4. Local Green Space

Policy TE2 of the post-examination Torquay Neighbourhood Plan designates Cary Green, which forms part of the site, as a Local Green Space. The policy states that in such spaces

"...development is ruled out, other than in very special circumstances.

Very special circumstances may include the provision of a new railway station at Edginswell, the provision of a new structure providing a café, beach facilities and toilets at Hollicombe Park. In addition, minor improvements to community access, or facilities that support their use for public recreation or amateur sports, or development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation, will be supported."

The proposed development would involve the creation of a 69-space car park on Cary Green. Although the regeneration of this neglected area of Torquay harbourside has

the potential to be a 'very special circumstance', in the absence of up-to-date evidence of the economic benefits of the proposals it has not been demonstrated that 'very special circumstances' exist and the proposals are therefore considered to be contrary to Policy TE2 of the Torquay Neighbourhood 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.

Proactive Working

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 try to ensure that all relevant planning concerns have been appropriately resolved. However, in this case, it has not been possible to recommend the grant of planning permission, or listed building consent.

Conclusions

These planning and listed building consent applications are considered unacceptable, having regard to the Local Plan and all other material considerations, and should be refused for the reasons outlined under the recommendations at the beginning of this report.

Annex A – Original Committee Report

*note: pagination is the same as for the original published report i.e. the first page is numbered '4'

Application Number

P/2015/0961

Site Address

Torquay Pavilion And Marina Car Park And
Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Mrs Ruth Robinson

Ward

Tormohun

Description

1. Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016)

Executive Summary/Key Outcomes

2. The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.
3. It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.
4. Discussions on the future development of this site have been ongoing for many years. The need to achieve regeneration of Torquay Harbour, particularly from tourism related uses, was highlighted in the now superseded Local Plan, this site was identified as a development site in the Draft Torquay Harbour Action Area Plan (2006), in the Mayoral Vision (2008) and now in the recently adopted Torquay Local Plan (2012-30) and in the Town Centre Master Plan.
5. Central to that designation is an ambition to secure the restoration of the Pavilion; a grade II listed building which suffers inherent structural problems and the redevelopment of the existing car park which forms an unattractive edge to the harbour, to create a catalyst for regeneration. The contribution that the development of this site could make to regeneration of the harbour side and town centre is significant.
6. Two planning applications (with accompanying listed building applications) have been submitted to the LPA. The first application, P/2014/0282 submitted in 2014 now comprises

a 14 storey tower block and is as yet undetermined.

7. The second application, submitted in 2015 provides for a lower rise solution and arose as a response to the scale of objection to the original application.
8. Both options include a 60 bed hotel, (part of the 'higher end' Harbour Hotel Group). This is to be located to the northern end of the site adjacent to Vaughan Parade on the harbour side using the Pavilion as 'a front of house', including spa, bars and restaurants with a 'bedroom bridge' linking the two.
9. Commercial floor space occupies the entire ground floor of the harbour side building opening up onto a new waterside walkway, residential accommodation in the form of either 43 or 45 flats occupies the balance of the site. Car parking is largely accommodated within the retained MDL car park with hotel and seasonal/ overspill proposed for Cary Green.
10. An economic appraisal submitted to support the application estimates that construction costs are in the order of £32m, the equivalent of 20 FTE jobs will be created though construction of the building, the operation of the hotel will create around 98 FTE jobs averaged over the year with 58 FTE jobs estimated to be generated by the operation of the bars and restaurants.
11. The application which is the subject of this report is a revision to the 2015 application and involves a building which increases from four storeys adjacent to Vaughan Parade to five storeys in the middle section of the building reaching eleven storeys at the most southern end of the site overlooking Fish Quay. It includes 69 car parking spaces on a 'remodelled' Cary Green.
12. It is principally these two aspects of the scheme, the height and size of the building and the loss of Cary Green to car parking that are at the heart of the significant level of objections from local residents and statutory consultees alike.
13. The evolving proposals for this site have been scrutinised throughout by the Councils Design Review Panel who favour a 'tall and elegant' solution for the site and Historic England who prefer a scheme that does not impose such a tall building on the harbour.
14. This revision has sought to fuse the most successful elements of both alternative approaches. The options have all been informed by appraisals of the impact on the historic environment and on views in and out of the site.
15. The size of the development is driven by the need to fund the restoration of the Pavilion (with an anticipated repair cost of £2.7m) and to deliver a new 4* hotel on the site which is not in itself viable.
16. A hotel use would be welcome given the sites location in a Core Tourism Investment Area and is beneficial from an economic point of view.
17. It is argued that a 'subsidy' in the form of this number of high value flats is necessary for

delivery.

18. This position has been examined via an Independent Viability Assessment. The primary purpose of this is to understand whether the scale of residential development proposed is necessary to ensure delivery of the overall proposal. It is also useful to determine whether the scheme can afford to meet S106 requirements in relation to Affordable Housing and other community infrastructure contributions and whether it has the capacity to deliver wider regeneration aspirations in terms of an exemplar building and appropriate public realm enhancements.
19. This assessment confirms that this level of development is needed to deliver a hotel led scheme on the site. It identified however, a greater profit margin than the applicant's viability study allowed for and whilst this wasn't sufficient to allow any meaningful reduction in the scale and bulk of the proposed building it did confirm that the scheme could afford to deliver a much improved range of public realm improvements that would help meet Local Plan regeneration objectives.
20. The applicant initially disputed this, but the scale, range and quality of public realm improvements has been substantially upgraded in recent weeks.
21. The primary reason for the delay in reaching a determination on the proposals for this site has been attempts to try and find the best way of arranging this rather challenging amount of floor space on the site in a way that minimises harm and to ensure that the quality of the scheme is such that it achieves a transformative scale of regeneration.
22. This most recent revision is the 'best fit' that has been achieved in terms of its basic form and relationship to the surrounding area and it does now deliver a more 'place making' scale of regeneration.
23. In policy terms, the decision maker's prime consideration and legal duty is to take fully into account the duty to 'preserve and enhance' the character of the Conservation Area and listed buildings.
24. S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas. There is a strong presumption against planning permission being granted in the event of there being harm arising from development. This has to be the first consideration.
25. The NPPF however does allow some discretion and harm, particularly 'less than substantial harm' can be acceptable if there are defined public benefits.
26. Much of the 'harm' is driven by the inclusion of the hotel as its low value means a significant level of development is needed to pay for it. It is therefore incumbent on the decision maker to consider whether those public benefits can be delivered in a way that reduces the identified harm on the historic environment. An option tested in the IVA involved deleting the hotel in favour of higher value flats which resulted in a far smaller

building.

27. In a nutshell, is the hotel 'worth' the level of harm?
28. In order to fully evaluate the implications of this development, in terms of the balance between harm and benefit, this report seeks to explain:
 - Why this amount of development is needed.
 - What impact the scheme has on the historic environment.
 - Whether the scheme is 'good enough' to drive quality regeneration.
 - What the public benefits are, whether they are of a scale that will mitigate for the harm and whether they can be guaranteed.
 - Whether the identified benefits could be delivered in a way that reduced the level of harm as required by the broad thrust of Historic England's enabling guidance.
29. Critical to this assessment is the scale of harm and the quality of the scheme. This is a key issue and is essentially a matter of judgment. Historic England's response confirm that this harm is 'less than substantial' although still significant. The Victorian Society, the Garden History Society and the Theatres Trust all consider the scheme to be of a substantial level of harm. Improvements to the quality of the building and to the public realm have been recently secured which have to be further weighed in the balance.
30. Relevant to considerations of the 'balance' between harm and public benefit is the wider economic context. Recent figures relating to increased poverty levels and deprivation in Torbay reinforce the need to put economic growth high up the agenda. National and local planning guidance promotes economic growth as a priority. Investment to the Bay needs to be encouraged if the economy is to flourish and ultimately that can only be achieved if viable schemes are encouraged and long established development sites such as this are bought forward.
31. The submitted economic impact report provides a best practice assessment of these benefits in terms of jobs created and wider improvements in the local economy.
32. In view of the centrality of the economic arguments, the LPA has commissioned its own review of the findings of this report. This confirms that despite some discrepancies in methodology, the assumptions about the overall economic benefit are sound.
33. The same balance of costs and benefits needs to be applied to the loss of Cary Green. This is as big an issue to local people as the concern about the size of the proposed buildings and the impact on the historic environment. The report explains that the design of this space has moved on from a tarmacked fenced car park to a more shared public space and recent improvements to its design and management have helped maximise public use and deliver a space of some quality that will create a more appropriate setting to the adjacent listed buildings.
34. The question is whether the recent improvements to the proposed building, to the scale

and quality of the public realm and to the treatment of Cary Green are good enough to offset some of the harm on the historic environment.

35. The following broad conclusions are drawn from an assessment of the scheme against the relevant policy guidelines.
- The level of residential floor space included in the scheme is shown to be broadly necessary for delivery of the hotel and restoration of the Pavilion and this has been confirmed via an IVA (Independent Viability Assessment)
 - There will be a significant level of harm to the character of the Conservation Area, on the setting of listed buildings and on the adjacent Registered Garden,
 - The quality of the scheme in terms of the detailed appearance of the building, wider public realm improvements and the delivery of place making regeneration has been recently been improved which to some degree offsets the scale of harm.
 - The benefits are delivery of a restored Pavilion and for a use that will secure its long term future, the provision of a more active and attractive edge to the harbour as a result of the new walkway and proposed restaurants and bars and the provision of jobs and associated spin off economic benefits.
 - The inclusion of flats in place of the hotel would deliver a smaller building and one that could positively enhance the character of the Conservation Area and the settings of adjacent listed buildings and Gardens but it would deliver fewer jobs, reduced economic benefits and although funding would be secured to refurbish the Pavilion it would not guarantee it a secure future use and the increased delay in achieving essential repairs to the listed building would be a concern.
36. The harm v benefits argument is very finely balanced and reflects priorities about whether the delivery of a hotel of this quality with all its attendant benefits in terms of jobs and economic stimulus outweighs the demonstrable harm to the historic environment and the character and visual amenity of the area.
37. It also needs to be weighed in the balance that alternative options which didn't include the financial burden of a hotel could deliver a more sympathetic scheme albeit with reduced job generation and lack of certainty about the long term future of the Pavilion. This is a very difficult judgement call. There is clear concern about the scale of harm on the historic environment. However, the Bay faces serious economic difficulties and increasing levels of deprivation which reinforce the need to encourage tourism, economic growth and regeneration.
38. This application involves delivery of a high end hotel which would be a real coup for the Bay. It would increase visitor numbers and benefit existing businesses. Should the 'public benefit' of greater economic vitality and a secure future for the Pavilion should be given greater weight?
39. The need for an exemplar scheme and a place making scale of regeneration to help mitigate the scale of harm is critical. Throughout the lengthy discussions on the site officers have held the line in terms of demanding a better building and a better setting to

help offset the harm to the historic environment. The recent revisions to the design of the building and the improvements to the public realm help towards meeting those concerns.

40. In terms of opting for a revised scheme that deleted the hotel, whilst this would deliver a smaller building there is no certainty that such an option would be taken up. Further it would not deliver the same scale of economic benefit, it would introduce further delay in resolving the future of the Pavilion and it would not secure such a robust long term future use for this building.
41. Officers therefore are now of the view that on balance, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and consider that the application should be approved subject to a s106 agreement, revised plans and appropriate conditions as detailed below.
42. However, it is entirely legitimate to reach the judgement that the public benefit of the proposal does not outweigh the clear presumption against planning permission being granted and that greater weight should be given to the preservation and enhancement of the historic environment.
43. For that reason, the recommendation below includes firstly the officers 'on balance' view and secondly a reason for refusal of planning permission should Members take the view that the harm to the historic environment is such that it is not outweighed by the public benefits of the scheme.

Recommendation

44. On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:
 - Opportunities for mitigating the impact of the lift shafts.
 - Confirmation that the balconies will be constructed as a continuous curve.
 - Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
 - Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
 - External plant in relation to listed building.
 - And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.
 - In terms of the S106 agreement:
 - To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site

over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units or such other method agreed with the applicant (e.g. open book accounting of the entire scheme) Costs/values to be used shall be based on the Savills Supplementary Viability Report dated 26th July 2016.

45. The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.

- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
- A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
- a commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
- To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
- To secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.
- To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not ‘bank parked’ as explained in the body of the report.
- To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
- Performance bond (if required)

46. However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation Area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.

47. As a consequence of its size, height and design, the development would be harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area. The development would harm key public views of listed buildings, eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the

NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

Statutory Determination Period

48. The target date for a decision to be made on this application was January 16 2016. The applicant has agreed to an extension of time for the determination of the application. Further time has been needed to negotiate a scheme that accords with the Councils policies and national guidance on this prominent and important site.

Site Details

49. The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.
50. It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.
51. The Pavilion is Grade II listed, 3-15 Vaughan Parade, the adjacent terrace is Grade II listed as is the Cary Estate Office on Palk Street and 1 Palk Street which overlook Cary Green. The quay walls and the Fish Quay which is to the immediate south of the application site are also Grade II listed.
52. The Grade 1 listed St Johns Church sits on the nearby hillside which forms backdrop to the harbour and overlooks the site. Part of the application site lies within Princess Gardens, a Grade II entry in the Register of Parks and Gardens. The registered Garden extends to the west of the application site and includes two further (Grade II) listed structures, the Fountain and the War Memorial.
53. Currently the MDL car park site comprises a semi basement and top deck car park providing 235 car parking spaces for the associated Marina. The lower level is normally used exclusively by MDL berthholders with the upper deck often used for public pay and display purposes.
54. The car park forms the western edge of the harbour walkway and includes at the northern end, retail and catering outlets with associated seating looking out over the inner harbour. It otherwise presents an inactive frontage to the harbour.
55. The Pavilion, constructed as a theatre in 1911, has been vacant for several years having previously been in use as a small specialised retail outlet and is now in a very poor structural condition. This largely arises due to corrosion of the innovative steel frame used in its construction and is a common problem in other similar buildings of this era.
56. Cary Green, a public open space, was laid out in its current form following the construction of the Fleet Walk Shopping Centre in the 1980's comprising a mix of hard and soft landscaping. It is overlooked on three sides by listed buildings, The Pavilion to the south, the Cary Estate Office and 1 Palk Street to the north and 3-15 Vaughn Parade to the east. To the north west of the open space lies the Ziggurat, a rather unappealing means of

achieving pedestrian and disabled access from Fleet Walk Car Park to the sea front which dominates this space. There is a detached single storey building with a pitched roof on the south side of Cary Green in use as a taxi office.

57. The site is located within the defined town centre and adjacent to the harbour with high levels of pedestrian and vehicular traffic. It is very prominent within the townscape both in short and long distance views.

Detailed Proposals

58. By way of background, two planning applications (with accompanying listed building applications) have been submitted to the LPA for development of this site. They all include a 60 bed hotel, commercial floor space, residential accommodation in the form of either 43 or 45 flats and parking on Cary Green.
59. These are **P/2014/0282** registered in June 2014 and **P/2015/0961** registered in October 2015.
60. There were subsequently two revisions to P/2014/0282 both of which included a 14 storey tower block to accommodate the residential flats. The most recent of these revisions is referred to as the 'Tower scheme' and is still to be determined.
61. **P/2015/0961** originally included a 10 storey tower with the displaced accommodation included in a higher six storey middle section of building and is referred to as the 'Stepped scheme'.
62. This proposal has been superseded by a further revision comprising an 11 storey tower with the higher middle section reduced to five storeys.
63. It is this version of P/2015/0961, which is the subject of this report. It is referred to as the 'revised stepped scheme'.
64. This revision involves the refurbishment of the Pavilion and a change of use to provide a 'front of house' facility for a new 60 bed hotel to be constructed on the harbourside. This includes 'public' uses such as bars, restaurants, a spa and function rooms as well as reception facilities for the hotel. The two are linked by an elevated and enclosed walkway with hotel bedrooms bordering both sides of the structure.
65. The scheme includes the construction of 43 2 and 3 bed flats in a building which increases from four storeys adjacent to Vaughan Parade to eleven storeys at the most southern end of the site and provides for restaurant uses on the ground floor with external terraces and a new public walkway along the harbourside.
66. 43 car parking spaces to serve the residential flats are included in the existing MDL car park.
67. The scheme originally included 74 car parking spaces on Cary Green with 32 spaces to serve the hotel and 42 'replacement' spaces for MDL. This has recently reduced to 69

spaces.

68. There is a sister listed building application **P/2015/0962** which relates to the detail of the external and internal alterations to the Pavilion and Quay wall. This will be considered later in the agenda.
69. The Council is the freeholder of the whole site and MDL have a long lease on the Pavilion building and the car park site. The applicant has a lease from the Council in respect of Cary Green (excluding the site of the taxi office) and incidental areas of public realm required to allow the development to proceed.

Summary Of Consultation Responses

70. It is to be noted that the comments below are summaries of the responses received to consultation and Members are urged to read the full transcripts which are available on line and have been circulated with the report.
71. **Historic England:** They confirm their strong opposition to the fourteen storey tower included in P/2014/0282 and recognise that the shorter scheme (the revised stepped scheme) now under consideration has undergone considerable design revisions some of which would improve the relationship with the historic environment. However they still consider that the taller element of the proposed building included in this application would have an adverse impact on the designated heritage assets. The restoration of the Pavilion is described as a significant heritage benefit along with other less substantial heritage benefits arising from the proposal such as the removal of the inactive and blank edge to the existing car park. The potential of this site to be a catalyst for regeneration of the harbour and to enhance the appearance and vitality of the harbour is also recognised but they stress that it is not their role but the LPAs to consider wider economic/regeneration consequences.
72. The response recognises the positive improvements to the design achieved in the latest revision but they do not consider that these amendments 'would negate the impact of the proposed tall building' considering that the assertive presence of a tower immediately to the right of the Pavilion when viewed from Princess Gardens would cause considerable harm to its setting.
73. It is also thought that the height of the Tower would harm the setting of the Grade I St Johns Church through challenging its visual primacy in the townscape and result in the listed Grade II Mallock clock tower being read against a backdrop of development rather than open sky.
74. The open character of the harbour would also be harmed by the proposed buildings obscuring views from the Strand and Torwood Street across the Bay. Similarly concern is expressed at the impact the tall building would have on views from the harbourside to surrounding Conservation Areas. They raise no objection to the loss of Cary Green.
75. The impact of the tall building is however in their opinion exacerbated by the 'challenging design of its upper levels and roof'. The letter also refers to HE Advice Note 4 'Tall

Buildings' which they comment should be taken into account in determining the proposal.

76. In conclusion, HE considers that harm will accrue to the setting and significance of the Pavilion and the character and appearance of the Conservation Area. The proposal would cause some harm to the setting of the Grade I listed church and some harm to the Mallock Clock Tower, the visual connection between Princess Gardens and Vane Hill would be diminished by the introduction of a 'built form' causing some modest harm to the setting of the Grade II registered gardens. The scale of harm is defined as less than substantial although still 'significant'. HE further advises that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.
77. **Victorian Society:** They confirm continued objection to the scheme and have resubmitted their previous objections. They describe the inclusion of a tall building 'in perhaps the most sensitive location in Torquay' as a 'disaster for the character of the town worse than past planning mistakes'. In their opinion the height of the tower is immaterial it is simply not suited to this site and they describe Torquay waterfront being treated like a piece of recently reclaimed land in Dubai rather than land reclaimed for public benefit. They cite substantial harm to the Conservation Area arising from the height and scale of the development and are also critical of the loss of Cary Green regarding it as an important public space and a quintessential feature of Victorian resort town planning questioning why its loss is necessary when Fleet Walk car park is a matter of metres away. They do not consider that the benefits of restoring the Pavilion are outweighed by the harm the development would cause and urge that these applications are refused or referred to the Secretary of State for determination if the Council is minded to approve.
78. **Devon Garden Trust:** Object in the strongest possible terms to this application considering that the design is 'mediocre in terms of design scale and massing resulting in a form of development which would be totally inappropriate when seen from Princess Gardens looking towards the Pavilion'. It is suggested that the design of Abbey Sands is 'most successful and enhances the experience of the seafront and promenade' and an equally simple approach would work better here. They remain convinced that the site is not capable of accommodating the large amount of development proposed and that the brief for the site needs to be radically reconsidered and alternative funding sought for the restoration of the Pavilion.
79. **Theatre Trust:** Is keen to find a new and sustainable use for the former theatre. They describe it as a highly significant seaside building and despite past alterations one that is remarkably well preserved. The proposals in the main are supported but they express concern about the impact of warm humid air from the pool and spa on the stability of the plasterwork immediately above the pool area. They are anxious to ensure that the height of the former auditorium is retained as any loss would be detrimental to the significance of the building. They urge the central void to be enlarged and question the location of the function rooms doors and dias which do not appear to match up with the location of the stairs on the first floor plan. The linked access between the two buildings is not liked and they would prefer the complete separation of the two uses along with review of the car

park being retained in its current form which detracts from the appearance of the building. Whilst outside their remit they comment that the tall building proposed in all revisions would affect the setting of Princess Gardens and the Pavilion and that the proposed use of Cary Green would have a negative impact on its setting and it should be retained as parkland. It is requested that if permission is granted that a full update and photographic record is made of all changes to the building.

80. **Design Review Panel:** The various proposals for the site have been reviewed by DRP on no less than seven occasions. The currently undetermined Tower scheme and the superseded Stepped scheme were most recently reviewed at its meeting on the 14th August 2015. The panel's view was that a more slender and more elegant tower (such as is included in the current Tower revision) represented the most appropriate way of accommodating the scale of development required by the Developer on this sensitive site. There were a number of detailed design points they felt should be addressed to confirm quality and to demonstrate 'delight' and a lighter seaside architecture.
81. In respect of the original Stepped scheme, the architectural treatment was described as weak, lacking in integrity, less elegant, lumpen and unlikely to 'exhibit the national/international award winning design quality previously urged for this incredibly important site'. A number of specific design concerns were detailed namely the increased height of the central section which disturbed the reading of the northern arm of the building, the lack of visual empathy with nearby historic terraces, exposed service cores and other flank/secondary elevations which turned their back to the town.
82. This critique strongly informed the design approach taken in evolving the revised lower rise stepped scheme currently for consideration.
83. **Conservation Officer:** Raises serious concerns about the impact of the scheme on the historic environment particularly the height of the development and the inclusion of the fifth storey on the terrace range which he considers seriously impacts on the views of the Pavilion from Princess Gardens. He draws attention to the importance of views from Princess Gardens of the roofscape and cupolas of the Pavilion against the wooded backdrop of the eastern harbour side which are masked by the scale of the four/five storey building. A similar impact is experienced in views from the west which divorces the harbour side from views of the Pavilion. He questions whether the public benefit of restoring this unique listed building is outweighed by the significant harm.
84. **Strategic Transport/Highways:** Offer no overall objection to the proposal in terms of traffic generation subject to the modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 Notice. The main concern is the lack of justification for use of Cary Green for car parking given the relevant local plan policy which seeks to minimise car parking in town centres. The lack of provision for disabled drivers, electric charging points and cyclists is raised as an issue. The means of connecting to cycling networks should be investigated. Highway cycling and pedestrian improvements as highlighted in the TA should be secured to overcome the identified conflicts. The Travel Plan is regarded as inadequate and should aim for a 30% target. Tracking for larger service vehicles should be carried out to ensure that the site is

fully accessible.

85. **Principal Natural Environment Officer:** Has reviewed the value of Cary Green as a public open space in light of this proposal and also as part of a wider review to consider efficiency savings. This has identified that Cary Green is not considered a 'destination space' but more of a 'transition space' unlike nearby Princess Gardens which has a broader role and function. He raises no objection to the removal of the existing planting and considers the large Palms could be relocated for use elsewhere. He considers the water feature to be of little value compared to the Princess garden fountain although some provision for a more modern water feature would be an attractive component of the new design. He supports the use of the space for events and markets and considers its use for such purposes would be preferable to the continued use of Princess Gardens and the Promenade but it needs to be properly designed to ensure a successful outcome such as lighting, seating and a more robust and visually appropriate surface treatment. The use of materials such as granite setts and paving to link with the palette used at Abbey Sands, along the Promenade and in the Town Centre would be more appropriate. More information is required with regard to the species of trees and their future maintenance.
86. **Arboricultural Officer:** Does not raise any specific objection to the loss of planting on Cary Green. He considers the replacement planting to be appropriate but would prefer to see larger specimens along the road side to tie in with the existing plane trees on Torbay Road. He considers that more detail is required in relation to tree pits and the species of trees should perhaps be given more consideration.
87. **Landscape/Green Infrastructure:** Considers that the detail of soft landscape plans should be secured by condition with clear management regimes. It is considered that the loss of Cary Green should be compensated by enhancements to Princess Gardens.
88. **Local Access Forum:** Object to the loss of Cary Green and consider that use of nearby facilities should be given greater consideration.
89. **Environment Agency:** Raises no objection subject to the scheme being implemented in accordance with the submitted FRA
90. **Natural England:** Raise no objection to the scheme bearing in mind its relationship to the Marine SAC subject to a Construction Management Plan being in place which can be secured by condition.
91. **Drainage Engineer:** Raises no objection subject to the scheme being implemented in accordance with the submitted FRA. His formal response requested a contribution towards the maintenance of Haldon Pier.
92. **South West Water:** Raise no objection.
93. **MMO:** Request that the applicant is made aware that early consultation be carried out to establish whether a Marine Licence would be required for the works.

94. **Police Architectural Liaison Officer:** Raises detail in relation to security of the hotel guests and future occupants of the proposed buildings.
95. **EHO:** Requires the imposition of conditions to secure soundproofing of residential flats to avoid nuisance to future occupiers from the operation of the A3 uses and the achievement of specific targets in relation to food extract systems in terms of odour and noise mitigation. Raises no specific objection subject to food safety standards being adhered to and management of the pool in line with HSE guidance.
96. **Affordable Housing Manager:** Considers that the scheme should deliver Affordable Housing Contributions in line with adopted Local Plan policy.
97. **Torbay Development Agency:** Are supportive of the scheme due to the need for significant regeneration in and around the town centre and the contribution development of the site would make to the continued economic recovery of the Bay. The delivery of a high quality hotel along with improved food and drink outlets would help boost tourism and compensate for the identified shortfall in quality tourism accommodation. This would increase visitor numbers, footfall and spending which would generate significant economic benefits. The 'Transformation Agenda' and the role sites like this will play in realising its ambitions is stressed along with need to be wary of undermining investor confidence and the impact this could have on the rate and scale of economic recovery.

Summary Of Representations

98. At the time of writing, 500 letters of objections and 89 letters of support have been received in relation to this application. It is difficult to be absolutely clear on numbers of respondents as there have been several versions of the scheme advertised and some understandable confusion about the relevant application numbers and many responses included both references.
99. It should be noted however, that significant opposition in the form of letters and various petitions were submitted in response to earlier proposals on the site and it cannot be assumed that the current revision to the scheme has necessarily overcome their concerns.
100. The **Torbay Friends of the Earth** originally submitted a petition signed by 345 people against the proposal on the grounds of overshadowing, loss of open carefree character, impact on views, contrary to the Councils Building Heights Strategy, creating a precedent for further development along the sea front and opposition to the loss of Cary Green on the grounds of traffic congestion and loss of open space. This has since been supplemented by a further petition with 2014 people voicing opposition and 13 support on similar grounds.
101. Objections have been received from the **Torquay Neighbourhood Plan Forum** and the **Town Centre Community Partnership**.
102. The former take issue with the loss of Cary Green and the impact of the development on the historic environment. The latter object to the failure to comply with the NPPF in terms

of sustainability, the protection of the natural built and historic environment and that it fails to take account of the proposals included in the emerging neighbourhood plan. It represents poor design and involves the loss of public open space. Cary Green is identified in the Draft Neighbourhood Plan as a protected space.

103. Local hotel operators object to the proposal. The **Rew Group** consider the economic justification for the scheme unconvincing and that it will have an adverse impact on existing hoteliers. **Richardson Hotels** consider the proposal 'monstrous' casting shadows over the harbour and obscuring views out to sea. An alternative community based approach is suggested to saving the Pavilion.
104. **Mervyn Seal**, a local architect of note has commented extensively on the proposals finding it damaging to the historic and architectural character of the area and has drawn up an alternative scheme for the site.
105. Two principal areas of concern have emerged from the consultation: the size and design of the building and the loss of Cary Green along with a number of more functional matters relating to the design and impact of the building.
106. The big issues are:
 - The height and scale of development on the site and its impact on the character of the Torquay Harbour Conservation Area, on the settings of adjacent listed buildings and on Princess Gardens.
 - The quality of the design being out of keeping with the quaint 'domestic' character of the harbour and comprising overdevelopment of the site.
 - Whether further hotel development is needed and whether this will only deflect investment from existing sites, whether there are enough visitors to fill the bed spaces, that a priority should be to sort out the town centre and that the economic justification is unconvincing. It is also thought that those responsible for the decline of the building should pay to have it repaired rather than it being funded on the back of this damaging development.
 - Whether the restoration of the Pavilion and delivery of the hotel can be guaranteed.
 - The loss of Cary Green for car parking. The concerns are the loss of a green public space and its historical associations, that it is not shown to be necessary as the existing MDL car park is not heavily used, that more shared use of the existing facility should be encouraged and that the loss of this space can't be justified when nearby public car parks are underused.
107. The design and functional concerns are:
 - The 'shadowing' impact of the 11 storey structure on premises on Victoria Parade and on Offshore.
 - The possible impact of wind funnelling.
 - The impact on the listed quay walls from the construction.
 - The design and impact of the 'bedroom bridge' linking the Pavilion to the proposed

harbour side hotel.

- The width and design of the new waterside walkway and loss of traditional railings.

108. There has also been a petition and letters of support which has been more pronounced in relation to the current revision. There is support from some parts of the business community, the **Torbay Chamber Of Commerce** submitted a petition signed by 270 businesses in support of the proposal and the **Chairman of the Torbay Business Forum** offered support on the grounds that it is essential to achieve regeneration of the harbour and will act as a spring board for further investment.

109. The **Torbay Civic Society** supports the proposals as does the **Torquay Yacht Club**.

South Devon College have voiced support for the proposal and would hope to use the new hotel for student training experience.

110. There has been a specific request from **Mencap** to find space within the scheme to provide changing facilities for disabled people which the applicants have said they can accommodate. This can be secured by condition.

111. The reasons given for supporting the scheme are:

- The benefits to tourism and the provision of jobs and economic growth.
- The ability to save the Pavilion.
- That the Bay needs to be bought into the 21st century and needs to embrace change.
- The creation of an iconic development that will complement Abbey Sands, encourage further investment and encourage regeneration.

Relevant Planning History

112. Planning permission was granted in the 1980's for a three storey terrace building situated on the quay wall and of a similar height to Vaughan Parade.

113. Application P/2014/0282 was submitted in early 2014 and followed an extensive period of pre application consultation. It is as yet undetermined as is the sister listed building application P/2014/0283.

114. This first submission as part of this application was relatively low rise, achieving a maximum height of 8 storeys however it was not considered that the quality of the scheme was acceptable. It achieved a more consistent height across the whole building and a wider footprint and so did not relate well to Vaughan Parade and due to the width of the 'bookend' encroached unacceptably on the setting of and views of the Pavilion.

115. This scheme was widely criticised by the public and statutory consultees alike resulting in a review by the DRP who suggested a taller more slender building may be more successful as a way of accommodating the scale of development proposed for the site.

116. The opportunity was taken to look at how Cary Green should be developed to create a quality hard and soft landscaped place within which overspill parking could take place when necessary but which could revert to public use for events or markets at other times.
117. A revised scheme was subsequently submitted which included a 14 storey tower and the application re-advertised. This involved a lower run of building in relation to Vaughan Parade but the 14 storey lozenge shaped 'bookend' which was considered a fine response to the site by the DRP in its further review was condemned by Historic England as causing substantial harm to the historic environment due primarily to the height of the tower. This scheme did however include Cary Green as a more dual use space with improved surfacing and tree planting.
118. Further revisions to the Tower scheme were suggested to try and create a more slender 'lightweight' appearance to the tower.
119. This further revised Tower scheme was advertised concurrently with a new application, P/2015/0961, for a lower rise 'stepped scheme' which sought to accommodate the required level of floor space in a different format.
120. Whilst the 'stepped scheme' reduced the scale of the bookend to 10 stories, the 'lost' floor space was simply reapplied across the rest of the block with consequent impacts particularly on the views of the Pavilion from Princess Gardens. The DRP considered the stepped scheme weak and uninspiring but Historic England were more positive given the reduction in height which they consider a major factor in achieving an acceptable character and form of development.
121. There were however a number of detailed areas of concern in relation to the new design of both the revised Tower and the stepped scheme.
122. The revisions to the Tower scheme did not overcome concerns about the dominance of the structure and the shorter tower in the stepped scheme was 'anywhere' architecture and had none of the 'delight' considered important by the DRP.
123. The northern elevation of the tower was dominated by service cores and lift shafts, the rear of the hotel by extract systems and vents and the stepped increase in height and busy design of the backdrop to the Pavilion was considered damaging to the setting of the Pavilion and on views from Princess Gardens. It also included a two storey link to the Pavilion which was particularly clumsy.
124. This again generated significant and understandable concerns from statutory consultees and members of the public.
125. The applicants were asked to look again at whether the more successful elements of both the 'Tower scheme' and the 'Stepped scheme' could be merged to achieve a more comfortable fit with its surroundings.
126. This was submitted as a formal revision to P/2015/0961 and has again been subject to

formal consultation and advert. It is this proposal that is being considered today.

Key Issues/Material Considerations

127. There is a long history to discussions on this site. This report will provide a background to those discussions in terms of planning policy, explain the evolution of proposals on the site, examine the key issues emerging from consultation and how these have been responded to in terms of changes to the scheme.

Principle and Planning Policy -

128. The now superseded Torbay Local Plan for the period 1997-2011 recognised the need to encourage regeneration of the Harbour through a series of measures including new development. The Draft Torquay Harbour Area Action Plan, from its inception in 2006, considered in more detail how key waterfront sites such as this should be developed to help 'fulfil the Harbour area's potential'.
129. Policy TH4 1 proposed the development of this key site as a 'significant waterfront destination' including hotel use, niche retail, restaurants, bars, residential accommodation and a new use for the Pavilion.
130. Whilst this document was not formally adopted, the broad principles embodied were picked up and developed as part of the Mayoral Vision (2008) which anticipated a significant amount of development on this site. This identified the potential to upgrade the 'unattractive single storey concrete structure on North Quay comprising the Pavilion car park' which it regarded as an underutilised resource in a prime waterside location. It also identified the need to secure substantial investment to repair and refurbish the Pavilion building. The current applicant has been in discussions with the Council and LPA about bringing development forward on this site since the Mayoral Vision was first mooted.
131. Time has passed and these problems have not gone away or been resolved so the need to develop this site to improve the waterfront and to secure the future of the Pavilion figures in the newly adopted Local Plan as it did in its predecessor.
132. The site is located in a Core Tourism Investment Area and within the defined town centre where there is need for regeneration and investment. Policy TO1 seeks investment in tourism related uses, Policy SDT1 underpins the need to secure regeneration and large scale investment in the town centre and harbour areas and policy SDT2 requires a mix of suitable town centre uses to come forward in the harbour area. The Torquay Town Centre Master Plan identifies the whole application site as a key regeneration site.
133. In the Draft Neighbourhood Plan Cary Green is identified as a protected public space.
134. The need to encourage and promote sustainable economic growth is a key objective in the Local Plan (Policy SS1) and the 'golden thread' in the NPPF.
135. The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact

this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden.

136. Whilst successive revisions have sought to reduce this impact it is clear from responses from both statutory bodies and the public that this remains a key issue.
137. In terms of legal context, sections 66 and 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas, listed buildings and their setting. It is clear from case law that the impact of harm on the historic environment has to be given considerable weight and the presumption has to be in favour of preservation.
138. In terms of judging the impact of development on the historic environment, NPPF paragraphs 132, 133 and 134 are of primary significance. Paragraph 132 explains that great weight should be given to the conservation of the heritage assets as set out in law.
139. Paragraph 133 and 134 however do provide some discretion and allow a degree of harm to the heritage asset providing this can be balanced against public benefit. Development which causes substantial harm is only acceptable in exceptional circumstances. Development which causes less than substantial harm is subject to a less onerous test but must still demonstrate clear evidence of public benefit. This is not however a simple balancing exercise but an assessment of whether there is justification for overriding the presumption in favour of preservation.
140. Paragraph 140 of the NPPF also explains that LPAs should assess whether a proposal for enabling development which would otherwise conflict with planning policies but would secure the future of a heritage asset would outweigh the dis-benefits of departing from those policies.
141. In this context HE Guidance in respect of Enabling Development which is still extant guidance (although in the process of being updated to reflect the NPPF) provides useful guidance about how the merits of a scheme should be evaluated. This particularly exhorts LPAs to ensure that in the event of harm, ways of minimising that harm are fully explored.
142. HE's Guidance Note 4 Tall Buildings is also of relevance in assessing applications on this site.
143. Adopted Local Plan, policy SS10 reflects the requirements of s. 66 and s.72 of the 1990 Act in terms of an expectation that development will 'sustain and enhance' the historic environment but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment and lists factors that will be taken into account in reaching a decision such as the need to encourage appropriate adaptations and new uses and whether the impact is necessary to deliver demonstrable public benefits.
144. Policy HE1 requires development proposals to have 'special regard' to the desirability of

preserving listed buildings or their settings. It also confirms that new development should respect the significance, scale, form, orientation and architectural detailing of any listed building it affects.

145. Policy H1 encourages the delivery of new homes, Policy H2 specifies that a percentage of affordable homes should be delivered as part of any scheme in excess of 15 units on brownfield sites. There are a number of functional and design policies in the NPPF and the Local Plan which are of relevance. These are paragraphs 56-64 in the NPPF and in the Adopted Local Plan, policies DE1, DE2, DE3, and DE4 in relation to design, amenity and building heights, ER1 in relation to flood risk, ER3 in relation to contamination, and ER4 in relation to ground stability. The hotel and commercial uses will contribute to the night-time economy in line with Policy TC5.
146. The scheme is required to reduce carbon emissions and the use of natural resources in its design and operation in line with policy SS14 of the Local Plan and a condition will be applied requiring the submission of a statement confirming how it will meet sustainability objectives. In terms of meeting equality and diversity objectives as required by policies SS11 and DE1, the delivery of changing facilities in line with 'Changing Places' guidance will help increase access to and use of local facilities.
147. In relation to movement, access and car parking, policies TA1, TA2 and TA3 are relevant. These recommend a sustainable approach to transportation promoting development in well located, accessible locations where the use of the car is reduced. In relation to town centre development TA3 indicates no minimum threshold and expects new development to be serviced by existing car parks and on street parking.

Key Issues.

148. The response to consultation confirms that there are two principle areas of concern which is the size and height of the development and its impact on the historic environment and the loss of Cary Green to car parking. These matters are dealt with in 1-9 below. The questions seek to address most significant points in assessing the scheme. There are also a number of specific design/functional matters which are dealt with in 10-14.
1. The scale of development proposed for the site and why this is needed.
 2. What impact does this have on the character of the historic environment?
 3. Is the scheme of exceptional quality?
 4. What are the public benefits of the scheme?
 5. Is this harm mitigated by the scale of public benefit?
 6. Can the delivery of the public benefit be guaranteed?
 7. Can this benefit be delivered in other less harmful ways?
 8. Is the loss of Cary Green to provide car parking acceptable?
 9. Is this loss mitigated by the proposed public use of the space and is this secured in any meaningful way?
 10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises?
 11. Is it likely to create wind funnelling?

12. Is the construction likely to adversely affect the listed quay walls?
13. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?
14. Is the width and design of the new waterside walkway acceptable?

Each will be addressed in turn.

1. The scale of development proposed for the site and why this is needed.

149. There have been ongoing discussions on an appropriate scale and form of development for this sensitive site for several years. All the proposals have been informed by an appraisal of the heritage significance of the site and its surroundings and an assessment of sensitive viewpoints through an LVIA (Landscape and Visual Assessment Appraisal).
150. An urban design analysis was then carried out which recommended that the most suitable form of building, in terms of achieving 'a good fit' with the established character of the area would be to continue the form and scale of the listed Vaughan Parade terrace terminating at the southern end of the harbour with a taller bookend of a similar height to the 5 storey 'Harbour Point' on Victoria Parade. All the schemes submitted to date follow this basic model but have included significantly more floor space than anticipated in this early appraisal.
151. This scheme provides for a 4/5 storey building in a terrace form fronting the harbour adjacent to Vaughan Parade to be used for hotel purposes increasing to an 11 storey 'bookend' comprising private flats to the south of the application site overlooking Fish Quay.
152. The 'terrace' element will be a recessed storey higher than the ridge height of the adjacent Vaughan Parade increasing to two storeys higher closer to the 'tower' or 'bookend element' of the scheme.
153. To give some idea of the height of the tower it is useful to consider comparisons with existing structures in the area.
154. Shirley Towers on Vane Hill Road are 9/10 storeys and Warren House, the block of flats on St Lukes Road South with the 'Pagoda' lift overrun is the equivalent of a 9/10 storey building. Ridgeway Heights and Kilmorie both achieve 8/9 storeys. This block at 11 storeys will be taller than those structures.
155. It is 36 m tall and so is some 14m shorter than the Observation Wheel which is 50m in height. Its height particularly has drawn strong criticism from statutory consultees and residents alike on the grounds of its adverse impact on the historic environment.
156. This amount of development is needed, according to the applicant, to deliver a viable scheme that achieves regeneration of the site in line with adopted national and local policies, to secure economic growth and to secure the refurbishment of the Pavilion with costs of around £2.67m.

157. For this reason, attempts to reduce the scale of building on the site which would help overcome the anticipated impacts have been resisted on the grounds of 'viability'.
158. This latest revision, as will be explained in a subsequent section, does involve some reduction in size and height achieving greater compatibility with its surroundings but it does still present a challenging scale of development.
159. It is necessary however to be mindful of commercial realities. There is a clear desire reflected in Local Plan policies to secure a scheme that will deliver a tourism related use, save the Pavilion and provide a catalyst for regeneration. To happen, it has to be demonstrably viable. This requires a certain amount of development to ensure delivery. Achieving this in such a sensitive context is difficult. This is recognised in the NPPF and lies behind the greater flexibility included in its policies which now accept a degree of harm in conservation areas in order to secure development that will deliver defined public benefit.
160. Many have commented that the Council should 'give' the building to the community but it must be noted that the Council whilst freeholder does not have control of the building. MDL have control of the Pavilion and the existing car park under the terms of a long lease. It is also suggested that those responsible for the condition of the building should finance the repairs. However, the problems with the building are a product of its steel frame construction and not entirely attributable to neglect or lack of maintenance. This is a significant inherent defect and a means of raising the funds for repair are needed along with a robust and guaranteed future use for the building.
161. It is important therefore to consider the evidence supporting the need for this amount of development.
162. A 'supplemental viability study' has been submitted by the applicant in relation to the current scheme to demonstrate that this amount of development is necessary to deliver a hotel of this quality on the site and to fund restoration of the Pavilion.
163. Such a study is also of relevance in terms of understanding the capacity of the scheme to deliver an exemplar building and a place making scale of regeneration and whether there is scope to meet S106 contributions towards Affordable Housing and Community Infrastructure Contributions.
164. The applicant was requested to submit a detailed summary of this supplemental study to be available for public comment. This document reflected only a 7% profit margin but was based on outdated figures and gave rise to comments from the public about the deliverability of the improvements to the Pavilion.
165. The data included in this study has been independently assessed via an Independent Viability Assessment (IVA) and it is now agreed by both parties that the predicted profit margin is closer to what would be regarded as 'viable'. Members have been fully briefed.

166. Developers would normally expect to achieve a profit margin of 20% but in this case they claim they are prepared to proceed on the basis of their estimated 14.89% margin. The viability study explains that the developer is prepared to do this due to his 'place making' motives to enhance the offer in the town centre which will increase the long term value of the hotel.
167. The outcome of the IVA indicated a possible profit margin of around 20% whilst still being able to 'afford' a S106 contribution of £270,000 along with around £1m towards public realm improvements. Whilst this doesn't represent enough profit to allow any meaningful reduction in the bulk of the scheme it did mean that the scheme should be able to afford to deliver in terms of quality, wider public realm enhancements and/ or s106 contributions.
168. Until recently there was some considerable distance between the LPA and the applicant in terms of what the scheme could 'afford' to deliver This was largely based on a disagreement about the likely values of the residential development which the IVA assessor considers to be underplayed but also from the low value of the hotel which according to the applicant costs significantly more to build than it is worth at least in the short term.
169. As a means of trying to resolve the impasse it was suggested that this 'surplus' profit, as a compromise, should be invested solely in the public realm in order to mitigate harm on key public spaces, to uplift the quality of spaces around the building and to achieve quality regeneration.
170. In the circumstances of the site, and the pressing need to deliver quality, this would be more beneficial than trying to meet Affordable Housing or wider S106 related objectives. This would benefit the operator of the hotel, deliver his place making aspirations and help achieve the required scale of regeneration from the LPA's perspective.
171. Significant progress has been achieved on this front and the applicant has now agreed to fund key public realm improvements 'up front' as well as to a range of public realm improvements to be funded through deferred contributions in the event that the scheme is more profitable than anticipated.
172. The Independent Viability Assessment (IVA) therefore confirms that there is limited scope for any appreciable reduction in the scale of development beyond that already achieved and that this number of high value flats is required to fund the restoration of the Pavilion and delivery of a 4* hotel. The recent concession by the applicant in terms of agreeing to fund wider public realm improvements goes a long way towards closing the 'viability gap'

It is necessary to then consider what harm this scale of development creates.

2. What Impact does this size of building have on the character of the historic environment?

173. The evidence in relation to the significance of the heritage asset and the impact of the scheme on the historic environment is contained in a Heritage Impact Assessment and its

subsequent addendums to reflect later revisions to the scheme and in a LVIA (Landscape and Visual Impact Appraisal).

174. These documents identify the sensitivities in terms of the character of the place and assess the impact of the proposal on them.
175. In relation to the impact on visual amenity which is addressed via the LVIA, this scale of harm is graded to provide a more objective assessment of impact. There is not a similar objective assessment of the impact of the scheme on the heritage assets despite requests for this to be supplied.
176. This section considers the changes to the scheme that have taken place to try and overcome concerns about the impact on the historic environment and then evaluates the components of the current proposal.
 - a) How this scheme has changed from earlier proposals.
177. This revision does involve some reduction in floor space, unlike its predecessors, which has allowed some concession to be made to achieving a better fit with its surroundings.
178. In the previous 'stepped' proposal the higher six storey middle section disrupted the architectural language of the lower range of building. It no longer picked up the 'terrace theme' identified as an important design concept but appeared disjointed and inconsistent with adjacent building typologies.
179. The height and elevational treatment of this middle section seriously affected views of the Pavilion from Princess Gardens. The location of plant, service cores and lift shafts impacted on the visual quality of the overall scheme but particularly the tower element by creating blank elevations which would have been readily visible from the town. The recessed upper storeys, designed to achieve some consistency with the scale of Vaughan Parade, were brought flush through the inclusion of relocated bedrooms into the setback, the link to the Pavilion was two storey and clumsy. The tower looked like a standard residential block and did not reflect any kind of 'sense of place' or seaside character.
180. In this 'revised stepped scheme', a floor has been deleted from the higher middle section thus allowing a return to a lower more streamlined terrace to form the northern arm of the building, service cores and lift shafts have been internalised, the recessed roof line has been reinstated, balconies have been made a more pronounced feature of the tower to lighten its profile, add delight and more of a seaside character and the link has been returned to single storey.
181. In order to recapture some of this lost space however, the 'bookend' has increased from 10 to 11 storeys.
182. Notwithstanding these amendments, the size of the scheme continues to generate a number of concerns, namely the height and dominance of the 'bookend', the scale of enclosure of the Harbour and relationship to Vaughan Parade, the impact on views from

Princess Gardens and the impact on views from the Conservation Area to the surrounding area.

183. It is useful to break down the scheme into the component parts and consider the impact of the tower, the height and form of the terrace and the overall scale and form.

b) Impact of the Tower.

184. There are clearly understandable concerns about the height of the bookend which at 11 storeys is imposing on the more domestically scaled harbour.

185. The tower has been reduced in size from that included in P/2014/0282 and the 'bookend' has been redesigned to create a far more visually appealing building and has been rotated slightly to try and reduce its impact on key views. It has a more 'seaside appearance' with a sharper more dramatic prow to the building. It provides for a dark central core encased in a pronounced white aluminium 'skeletal' frame with generous balconies. The top two storeys are set back and designed to try and reduce its dominance. This produces a more lightweight appearance which reduces the dominance of earlier schemes.

186. Historic England raise a series of concerns in their response about the impact of the tower on key views although in relation to this scheme it is described as 'less than substantial' and that design modifications to the roof and upper level could reduce its impact further. Since then, revised plans have been submitted which simplify the upper levels of the tower though a change in roof profile and the framework encasing the upper levels has been made less asymmetrical. It is considered that this does reduce the impact of the upper levels of the tower although it now exposes the lift shaft to view which the architects are trying to remedy.

187. Historic England have commented on this revision and whilst they confirm that the 'geometry of the roof in the revised proposal is less assertive and will be less of a draw to the eye' it is only considered to offer a modest improvement and does not alter the substance of their advice which is that the scale of harm is considerable. Any progress on mitigating the impact of the lift shaft will be provided at the meeting.

188. The Devon Garden Trust is a statutory consultee as the development affects the Registered Park and Garden but their consultation response does not specifically suggest that the height of the proposed building is an issue. Their comments relate clearly to the overall mass and quality of the design which they consider mediocre and not providing 'an elegant building of the highest quality'. The Theatre Trust raised concerns about the impact on the setting of the Pavilion but accept that this is beyond their remit.

189. The Victorian Society expressed serious concerns about the level of harm arising particularly from the height of the 11 storey tower.

190. The impact of the tower is a serious matter of concern to many local people.

191. There are two sources of guidance in respect of the acceptability of tall buildings. The

Councils Building Heights Strategy 2010, the principles of which are now included in the Adopted Local Plan (policy DE4) and HE Advice Note 4 'Tall Buildings'.

192. In broad terms, the potential of tall buildings to promote regeneration particularly in accessible locations and where nodes of activity can be reinforced such as harbours and along sea fronts is recognised. Tall buildings may be acceptable if they enhance the vitality of an area, contribute to the regeneration of Torbay, strengthen the character of the area, are appropriate in terms of their visual impact, provide wider urban design or socio-economic benefits, make a positive contribution to the built form townscape and surrounding landscape, and preserve or enhance local long distance views and key vistas subject to full impact testing.
193. HE guidance note 4 'Tall Buildings' requires that great weight should be given to the assets conservation in cases where tall buildings have an adverse impact on a designated heritage asset and that any harm requires a clear and convincing justification. It goes on to say, that in assessing this justification and weighing any public benefits offered by a tall building proposal, particular regard should be paid to the policies in paragraphs 8 and 9 of the NPPF which state that economic, social and environmental gains are to be sought jointly and simultaneously in order to deliver positive improvements in the quality of the built, natural and historic environment. This, it suggests may involve looking at alternative designs or schemes that might be more sustainable because they can deliver public benefits alongside positive improvements in the local environment.
194. Thus in policy terms a tall building in this location would not be precluded as a matter of principle providing it was thoroughly tested, shown to deliver quite significant wider public benefits and that alternative ways of delivering those benefits had been fully considered.

c) Height and Form of the Terrace

195. The northern arm of the building takes the form of a terrace as identified in the Urban Design Appraisal as being the most appropriate approach to developing this part of the site. At four to five storeys it is a taller structure than envisaged in this study which recommended a more consistent height relationship with Vaughan Parade so that the domed roof of the Pavilion could still be read from Victoria Parade and to avoid overwhelming views of the Pavilion from within Princess Gardens.
196. Whilst the relationship of the four storey section of the terrace to Vaughan Parade is considered broadly acceptable, the increase to five storeys along about half of its length does act in a way to impede views and disrupts the visual relationship of the Gardens and its Pavilion building to the Harbour and its wooded backdrop.
197. It appears particularly imposing in views from Princess Gardens. It is this aspect of the proposal that the Councils Conservation Officer finds the most harmful and it is certainly picked up as a particular concern in the Devon Garden History Society's comments.
198. In response to this concern, the applicant has looked again at whether this element of the building could be removed or whether it could be set back a further metre to potentially

reduce its visual impact. It is clear that removal would make the scheme unviable and it has been shown through modelling that setting it back would have a negligible impact on the visual relationship between Princess Gardens and the harbour side.

199. This element of the building is harmful to the historic environment. It does impact on views between the Harbour and Princess Gardens. However the severity of impact is dependent on where views are taken from and there are positions within the Gardens where the new building succeeds in blocking views of Shirley Towers which might be regarded as an advantage.

d) Overall Scale and Form.

200. The proposed building is clearly of a size and scale that is challenging and despite design modifications, is difficult to accommodate without harm to the historic environment.

201. It will form a fairly imposing edge to the harbour and whilst the mass is broken down to pick up the verticality of the adjacent terrace it will appear out of kilter with the fine grained more domestic scale of the majority of the harbour side. It will enclose the harbour to a degree that will fundamentally affect its character and it will impact on views in and out of the Torquay Harbour Conservation Area. It will also affect the setting of the Grade II listed Pavilion and the Registered Park and Garden.

202. There will be some harm to the Grade I Listed St Johns Church as from a number of key views its primacy in the townscape will be eroded. It will also affect, through the backdrop it creates, views of the Grade II listed Mallocks clock tower. These concerns are reflected in the responses from statutory consultees who consider the benefit of saving the Pavilion to be outweighed by the harm the development will cause.

203. However, this scheme is an improvement on previous proposals. It is well designed and has inherent merit. It has sought to fuse the best elements of both the original tower scheme and the original stepped scheme to produce a building that, notwithstanding its size, has tried to reflect the rhythm, verticality and appearance of the adjacent listed terrace in the design of the northern arm of the building and includes a tower element that has been substantially redesigned to face all ways, has eliminated the blank elevations that marred the previous iteration and includes an architectural treatment that succeeds in creating a more lightweight and less dominating appearance. This relieves some of the dominance of the previous proposals.

e) Assessment of impact.

204. Key views have been thoroughly assessed on a Member site visit. The viewpoints considered are included as an appendix to the report. Comparisons with structures of a similar size were also made to ensure clarity about height.

205. Additional viewpoints were requested by Members following the site visit and these have now been submitted and forwarded to Members and included on the Councils web site.

206. The impact of the development on these viewpoints have been more objectively assessed as part of the LVIA which specifically looks at the impact of the proposal on visual amenity and townscape.
207. This describes a 'slight beneficial' impact on views along Torwood Street when the development is operational. A 'moderate adverse-slight adverse' impact is described on views from Parkhill Road due to the screening of the Pavilion in views across the Harbour. Views from Beacon Hill are classified as 'slight adverse' as the Royal Terrace Gardens will remain as a back drop to the site.
208. Views from Haldon Pier, Beacon Quay and South Quay are described as 'slight adverse' as partial views towards the Pavilion will be maintained by the form of the proposed building. Views from the Terrace will experience a 'moderate adverse' impact due to the screening of views towards the sea. Views from Rock Walk will experience a 'slight adverse' impact as will views from Princess Gardens according to this assessment. Members will be able to consider whether this assessment correlates with their impressions following the site visit.
209. In relation to views down Torwood Street, which are currently quite open and include vistas of the sea and countryside beyond, these would be largely obscured by any development of the site which is inevitable if the unattractive car park edge to the harbour is to be remodelled as anticipated in various local plan proposals both now and in the past.
210. The same applies to views of Mallocks Clock Tower: its backdrop will fundamentally change through any development of the car park site whatever its size.
211. A beneficial impact of development on this site and an aspect missed in the Historic Impact Assessment and the LVIA is the degree to which views of the rear of the Fleet Walk shopping centre will be screened from positions along Beacon Quay and South Quay.
212. An objective matrix base evaluation of the impact of the proposal on the heritage assets, similar to that included in the LVIA is not provided in the Heritage Impact Statements to help a greater understanding of the scale of harm on the defined heritage asset. It offers a commentary on the evolution of the proposals and makes presumptions about relative scales of harm but does not attempt to quantify the level of impact on individual heritage assets.
213. Neither does it deal satisfactorily with the cumulative impact of this scheme on the character and appearance of the place which is largely defined by the relationship of these individual assets. The Councils Conservation officer considers the assessment of harm in relation to the historic environment to be inadequate.
214. There is unquestionably a degree of harm arising from development of this site and in the absence of any evidence to support an alternative position it has to be concluded that the level of harm is at least of a 'significant' or 'considerable' scale which is reflected in the advice of Historic England.

215. Overall it can be concluded that in policy terms for the scheme to be acceptable it should be of exceptional quality and deliver quite exceptional public benefits if the presumption in favour of preservation is to be overridden.

216. It is also necessary to consider whether the benefits of the proposal can be delivered in less harmful ways. This forms the substance of the following sections.

3. Is the scheme of exceptional quality and will it drive regeneration forward?

217. For a scheme to drive genuine regeneration it has to deliver both in terms of the building and its setting. This is well demonstrated by the Abbey Sands development where the quality and extent of the new public realm is of equal importance in terms of creating a sense of place as the building itself.

218. The delivery of a scheme of exceptional quality and a transformative scale of regeneration is a key policy requirement. Policy SDT2 explains that 'high quality development is needed which improves the public realm'.

219. If delivered, it would fall to be considered as a defined public benefit due to the long term beneficial impact it could have on the quality of the place. It may also be sufficient to mitigate some of the harm described on the historic environment. The DRP in their assessment of proposals stressed the need for an exemplar scheme and setting to offset any harm on the historic environment.

a) The quality of the building

220. The quality of the building design is a product of satisfying broad principles of scale, form and mass along with ensuring that the detailed appearance and use of good quality robust materials is fully resolved and secured.

221. Setting aside issues of size, there have been ongoing discussions regarding challenging elements of the design that could be improved on to better meet the anticipated levels of quality. These were:

- The harmful impact of the 'fifth storey'
- The detail in relation to north elevation of the terrace building.
- Means of better integrating the bedroom link.
- The need to pick up more strongly the character of the adjacent Vaughan Parade in terms of the window detailing, scale, proportion and relief.
- Measures to reduce the visual impact of the Tower.
- Establishing a base line quality in terms of the use of materials and detailed design matters.
- Further information/revised plans have now been submitted which clarify that;
- The 'fifth' storey cannot be removed for viability reasons or its impact on views mitigated by setting it back. The choice of materials to be used will be important as

will be the detailed design in terms of achieving a recessive appearance. This could be secured by condition.

- Options testing in relation to the north elevation show it to be broadly acceptable providing the large scale detail demonstrates sufficient quality in terms of relief, detailing and signage which can be secured by condition.
- The bedroom link has been marginally improved by the inclusion of a glazed set back at the western end of the link where it joins the new building to match the lightweight glazed box which separates the link from the listed building. This provides a more balanced appearance to the link. There is still a need to ensure that in terms of detail it is acceptable and that its underside is treated in a way that will lighten and add interest to pedestrians passing beneath. This can be secured by condition.
- The Design Review Panel were anxious to ensure that in terms of the detailed handling of the façade to the new building, the relationship to Vaughan Parade was fully reflected in terms of proportions, relief and solid to void ratios to provide ‘an ordered and finessed façade’. Larger scale sections have been provided but there is still some need for further detail to ensure a wholly satisfactory approach particularly in terms of achieving relief and shadowing across the scheme. This can be secured by condition.
- It is considered that the distinctive framework to the tower is shown to be adequate in terms of relief although the use of aluminium as a material rather than render needs to be fully demonstrated through detailed drawings showing how a continuous curve can be maintained and that joints are properly handled. On a similar point, there is some concern that the glazed balconies which are shown to be frameless are nonetheless sectional or faceted rather following a continuous curve as secured at Abbey Sands and this should be remedied. If the applicant is agreeable, this detail can be secured by condition.
- The upper storeys of the tower have been revised to reduce its dominance although the change to the roof profile does expose the lift shaft to view. It is confirmed by Historic England that the geometry of the roof profile is less assertive although it does not change their advice.
- Whilst sections through the façade have been supplied in relation to the hotel building and the apartment building larger scale details in relation to key features of the building are required before the quality of appearance can be confirmed. The specification of materials show a commitment to the use of good quality materials but there are some notable omissions which will need to be satisfied before this matter is assured. This matter could be left to appropriate conditions.
- The impact of external plant in relation to the Pavilion is not fully resolved and requires further information to be submitted which is picked up in more detail in the listed building application.

b) Quality of the public realm

222. As originally submitted, the only public realm improvements included were a ‘new’ harbour side walkway as a replacement for the existing public right of way and the delivery of good quality stone paving immediately adjacent to the front elevation of the Pavilion building

and the new hotel building extending only across to the proposed car park on Cary Green.

223. A 'public square' was included in the submitted landscape proposals occupying the area between the rear of the Pavilion and the Promenade but this was only to be half completed up to the 'redline'.
224. There were no other proposals to lift the quality of the adjacent public realm and attempts to remedy this lack of a more comprehensive approach to secure wider regeneration objectives were met with resistance on the grounds of viability.
225. The submitted LVIA specifically recommends a strategy for mitigation of harm to reflect guidance in the Councils Urban Design Guide to create a landscape design that 'alleviates negative visual impacts and integrates the site within the urban fabric of Torbay'. It states that the design of external spaces shall be integrated into the wider landscape setting to reinforce local distinctiveness and that the design of the public realm shall create successful places that respect natural features and are accessible to all. Particular regard it says should be paid to Princess Gardens anticipating improvements to the quality of this open space through 'improvements to the spatial design of areas adjacent to the Pavilion and to Cary Green which forms a visual extension to the Gardens reinforcing the connectivity between these green spaces that will strengthen both the visual and physical quality'. It is fair to say that the submitted scheme fell far short of this ambition.
226. In an attempt to move this forward, Officers identified where enhancements should be secured. Some of these improvements are 'site related' and should be delivered as a matter of course due to the impact of the proposed development. Others are related to wider regeneration aspirations which should be funded either through S106 contributions or from the surplus profit identified through the IVA to mitigate the impact of the scheme on the wider area.
227. As a result of the 'viability gap' identified through the IVA and the fact that good quality and extensive public realm improvements are vital to any successful scheme officers have pushed for significant improvements to the scale, range and quality of the public realm improvements.
228. It has recently been agreed that the following additional public realm improvements are to be delivered 'up front'.
- **Princess Gardens:** The applicant has offered a financial contribution of £30,000 towards enhancements in Princess Gardens. A Conservation Management Plan is in the process of being put together to direct investment in the Gardens and this document will clarify the most appropriate way for this money to be spent. The Gardens are 'at risk' and as the significance of the heritage asset is diminished as a result of the development it is wholly appropriate that there should be some mitigation arising as a consequence of this development.
 - **Cary Green:** Setting aside issues of principle, there had been ongoing debates about the quality of the proposed surface treatment of the car park area and the 'patchwork quilt' effect of not dealing with the whole area on a comprehensive

basis. In order for this space to function as a key public space when not used for parking and for it to form an appropriate setting to the key listed buildings that directly overlook it a high quality and more holistic approach was considered vital. A revised scheme has now been submitted which extends granite paving across the whole of Cary Green and includes replacement of the brown herringbone paving adjacent to the rear of properties on Vaughan Parade. It would be preferable if this extended further to pick up the area between the new stone setts at the foot of north elevation of the proposed building and Offshore and included the area alongside 1 Palk Street and the SoHo Bar. Although this represents a significant improvement on the submitted scheme, the further extensions should be secured. The former should be delivered 'upfront' as part of the Cary Green revised scheme and the latter as a 'deferred contribution' as it is not so critical to the delivery of a quality setting to the Pavilion. The revised layout for the most part confines hotel car parking to the west of the site adjacent to the road leaving the eastern side adjacent to the Vaughan Parade listed terrace for seasonal overspill parking and for the most part available for public use. It presents a far more attractive, consistent and coherent approach in terms of delivering a space that will be of public value and will provide an appropriate setting to key listed buildings.

- **The Promenade to the rear of the Pavilion:** It has been agreed that the short stretch of the old hexagonal paving slabs that are still in place here will be replaced with granite paving to match that which exists to the west of the site.
- **The public square to the rear of the Pavilion:** It has been agreed that this will be completed in accordance with the submitted detail rather than left half finished.
- **Fish Quay:** The loss of the traditional railings arising from construction of the new harbour walkway is of concern. The applicant has agreed to mitigate this by relocating these railings to South Quay to replace the existing poor quality galvanised railings. In order to provide a cohesive public realm adjacent to the new development and along Fish Quay they have also agreed to replace the poor quality galvanised railings which extend along Fish Quay to the bridge and introduce a more modern form of enclosure to match that on the new development which would provide some visual integration between the application site and the bridge. Details to confirm an acceptable approach have not as yet been supplied.

229. In terms of deferred contributions, the following is agreed:

- **The Ziggurat:** The removal of this structure is identified as a key element in the Torquay Town Centre Master Plan in terms of public realm enhancements. Its removal and appropriate treatment would to some degree compensate for the loss of Cary Green as a public space. A contribution of £100,000 towards this ambition has been offered but only as a deferred contribution.
- **Fish Quay:** Whilst resurfacing of this would be better 'upfront' it was agreed that if the proposals for Cary Green fully delivered in terms of scope and quality then this could be considered as a deferred contribution.

- **Cary Green:** As explained above, the extension of the granite paving adjacent to SoHo should be secured as a deferred contribution depending on the resources available and the priorities at the time. This option can be reflected in the s106 agreement.

230. The proposals in relation to the public realm have been considerably upgraded since submission and now begin to meet the ambition identified in the LVIA to deliver integrated improvements to the public realm. One of the identified benefits of development on this site is to act as a catalyst for regeneration and it is considered that is now reasonably met.

231. This scheme now delivers appropriate enhancements to lift the quality of spaces around it and achieves 'place making' regeneration to offset some of the harm to the historic environment.

4. What are the public benefits of the scheme?

232. As has been explained, the public benefits of the proposal can outweigh the strong presumption against approval which arise from concerns about the scale of harm on the historic environment identified in the sections above.

233. However, by law, the harm has to be given considerable weight and therefore the public benefits also need to be considerable to outweigh the harm.

234. The public benefits are:

- The restoration of the Pavilion and for a use that will guarantee its long term future and maintenance,
- The delivery of a 4* hotel and the contribution this will have to maintaining Torbay as a premier tourist resort.
- The creation of jobs and associated economic activity.
- The regeneration of the harbour side and wider public realm improvements.
- Provision of new homes in a town centre location.

235. The Pavilion is in a poor state and its restoration has been a key driver in pursuing development proposals on the site. It was an innovative building at the time of its construction, conceived as a complete steel frame from the foundations upwards. The steel frame was then built into the external walls which were constructed of faience blocks and brickwork. Many of these first generation steel framed buildings have corrosion issues. It was identified as being in need of substantial investment in the draft Torquay Harbour Area Action Plan in 2006. An assessment of the current condition of the building was carried out in 2013 by Alan Baxter Associates who are specialist structural engineers.

236. The building suffers from severe water penetration which has led to corroded steelwork and cracked faience. The costs of correcting these defects to give the building a robust

25 year 'life' has been recently estimated at £2.76 million. There is no grant aid available to rectify the faults whilst the building remains under private control. A repairs notice, which the LPA could serve would only achieve basic weatherproofing to arrest further decline, it could not require the fundamental intervention that is needed to secure the long terms future of this listed building.

237. Restoring the Pavilion and identifying a robust long term future for the building is a key public benefit. Use as a front of house for the proposed hotel is a very good use for the Pavilion. It secures public access and gives the building a long term future. This satisfies two public benefit tests in that it saves a listed building at risk and it secures a use that will ensure its long term maintenance.
238. The delivery of a good quality hotel in a prime location can be seen as a public benefit as it delivers jobs, promotes economic activity and generates vitality. The anticipated future occupier is the Harbour Hotel group owned by the applicant the Nicholas James Group. This is a 'high end' chain operating mainly 4* hotels and it would have a significant impact on visitor attraction putting Torbay firmly on the map.
239. An economic impact assessment submitted to support the application, evaluates the potential of the scheme to benefit the local economy by looking at three measures of impact, employment generated, wages and Gross Value Added (GVA) which is a measure of how much value the proposed development adds to the local economy.
240. These impacts arise from the construction of the development, the ongoing operation of the hotel, the ongoing operation of the commercial uses. The report estimates that, based on the £32m costs of construction, the equivalent of 20 FTE jobs will be created though the building of the scheme, the operation of the hotel will create around 98 FTE jobs averaged over the year, 81 jobs are estimated to be generated by the operation of the bars and restaurants, cumulatively this will generate wages in the order of £3.7 m per annum and the GVA (i.e. the value of the scheme to the local economy) is in the order of £4.27 m per year.
241. The report also looks at the 'net additional local impact'. This considers a range of factors that will have an impact on the contribution that this scheme makes to local economy such as how much employment and economic impact is displaced from elsewhere in the bay, how much of this will leak outside the local area and the multiplier effect of the spending practices of the operator. Based on the Harbour Hotels policy of local sourcing of produce and services it estimates this to add in the order of 136 jobs, £2.5 m in wages and an estimated GVA of £2.9m to the overall scale of benefit.
242. The report also points out the unquantified impacts of the scheme in terms of encouraging regeneration of the harbour, helping to deliver the wider proposals set out in the Town Centre Master Plan and meeting the various economic objectives embodied in the Economic Development Strategy, the 'Turning the Tide' Tourism strategy and the newly Adopted Local Plan.
243. The need for jobs and economic growth is one of the Councils key objectives and the

recent data in relation to increasing poverty levels reinforces the need to put the creation of jobs as a high priority. The Indices of Multiple Deprivation (IMD) is the means by which the wellbeing of a community is measured. Torbay performs poorly when compared to the country as a whole. The Community Investment Areas (CIA's) included in the Local Plan are based on the top 20% most deprived areas relative to England and the 2015 data show that deprivation is worsening across the Bay with CIA's growing in extent and the scale of deprivation.

244. The most up-to-date tourist data confirms that visitor numbers and turn over has increased and 'Turning the Tide' indicates that there is a shortage of the higher ranking hotels in the 4 and 5* categories. Torbay's economy relies heavily on tourism. In 2013 the value of tourism to the local economy was £445m with the equivalent of 9234 full time jobs which is 22% of all employment in Torbay. This confirms that there is a demand for new and tourist improved facilities.
245. The report concludes that employment and GVA generated by the development are estimated to be an equivalent of around 1% in the tourism sector of Torbay and it would suggest that a good quality hotel with all the spin off benefits entailed will deliver a significant boost to the local economy.
246. In view of the nature of appraisals, the centrality of the economic argument and the disputes about the methodology used the LPA has sought a review of the Economic Appraisal submitted in support of the application. This confirms a substantial economic benefit although it points out that the number of jobs likely to be generated in the hotel is less than the average 98 FTEs suggested in the HJA Economic Appraisal. Based on the HCA Employment Density Guide a figure closer to 60 FTE's would be expected. However the study concludes that it would make little difference to the overall prediction of economic benefit as the consultants used 'conservative' GVA multipliers and omitted to include additional new visitor spend in their calculations. Their verdict is that the overall employment and GVA impacts predicted is robust.
247. It should be noted that a range of figures have emerged from various studies and appraisals used to help inform a judgment about the overall economic benefit of the proposal and the viability of the scheme itself. Construction costs have varied between studies along with discrepancies in likely values. Whilst these differences have been identified and where possible resolved they are not of a scale to undermine any decision and it should be recognised that economic appraisals and IVA's are predictions based on best practice and not an exact science.
248. The Chamber of Commerce support the scheme on the grounds of the benefit to the local economy as do other businesses in the Bay. Some hoteliers notably the Rew Group and Richardson Hotels consider the economic benefits overplayed and that further hotel development would be damaging to the economy when there are so many hotels struggling and in need of investment. The point has been made in responses to consultation that a new hotel here will simply divert investment from other hotels in the area. The argument is that the Bay is not short of hotels but of good quality ones and surely it is better to invest in existing business than to build new hotels particularly given

the harm arising.

249. In this context it is useful to note that the Imperial Hotel has been sold to a quality operator who clearly wasn't deterred in his investment decision by the prospect of a competitor setting up on the harbour side.
250. In relation to wider benefits, the applicants have agreed to include within the commercial space an adult changing facility to the 'Changing Places' standard which will be of significant benefit to people who need this kind of facility and to their carers.
251. The delivery of new housing would be beneficial from an economic point of view, it would contribute to delivery of a five year land supply and deliver new homes bonus.
252. To sum up, the scheme delivers in terms of achieving restoration of the Pavilion and for a use that will secure its long term future. It will be of significant benefit to the local economy.

5. Can the delivery of the public benefit be guaranteed?

253. In terms of the delivery of the restored Pavilion and the hotel building, the lease the applicant has negotiated with the Council indicates that an agreed schedule of works would be undertaken prior to occupation of any of the apartments on the site. It also indicates a commitment to construct the hotel to shell and core prior to occupation of the 20th apartment on the site. This can be secured by condition.
254. Given the condition of the building, more detailed discussions will be needed about the scope and scale of these works which should be more fully specified and should reflect the recommendations of the specialist engineer and include implementation of the range of works included in the submitted listed building application. A prompt start should be secured and if there is a delay in implementation a further review maybe necessary of the scope of works needed.
255. A 'performance bond' to ensure delivery in the event of any unforeseen financial difficulties may be of benefit.
256. It would also be necessary to ensure that the hotel to be delivered is of the promised quality that will have the best chance of securing the anticipated spin offs in terms of economic growth and regeneration.
257. The Harbour Hotel Group are a good quality high end operator. Members visited the Salcombe Harbour Hotel to assess the quality of the offer and the facilities. It has a policy of local procurement both in terms of construction and sourcing of produce. This was stressed in the HJA Economic Impact Report and contributed to scale of economic benefit predicted. The S106 should therefore include a signed lease or other means of confirming occupancy on completion of the scheme and a commitment to local procurement included. Given the potential impact of construction works on the harbour a clearly and tightly defined phasing programme would be required.

258. Whilst economic benefits of the scale suggested cannot be guaranteed, the HJA Economic Impact Report was independently reviewed and despite some quibbles about methodology, it found the predictions regarding the likely economic benefit to the town to be sound.
259. The public realm improvements could for the most part be secured through a S278 notice and appropriate conditions. The financial contribution towards the Princess Gardens enhancements and any deferred contributions will need to be secured through the S106 agreement.

6. Can this benefit be delivered in other less harmful ways?

260. This is a key test in assessing the acceptability of a scheme that is harmful but predicated on the need to fund, in this case, restoration of a listed building.
261. A common theme in Enabling Development Guidance and explicit in Historic England's consultation response is that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.
262. The work carried out as part of the IVA to assess whether this scale of development was necessary to deliver this hotel led scheme identified that the low value ascribed to the hotel was driving the large number of flats to effectively subsidise its delivery and to pay for restoration of the Pavilion.
263. It is therefore evident that harm might be minimised by deleting the unprofitable bit of the development and replacing this with a higher value land use. The applicants were asked to look at what sized building would be needed if it was to deliver ground floor commercial uses with residential flats in place of the hotel and derive enough profit to restore the Pavilion.
264. This produced a smaller building, much closer in form and size to that identified in the Urban Design Assessment as capable of being accommodated in this location with minimal impact on the historic environment.
265. The Pavilion would lend itself to a variety of alternative uses that would become more feasible once fully repaired although its use as a 'front of house' facility for an established high end hotel chain does provide a long term guaranteed use and resolves future maintenance liabilities.
266. The inclusion of a hotel delivers evident economic benefit although this has to be set against the harm identified to the historic environment.
267. The 'residential option' would clearly not deliver the same scale of economic benefit as inclusion of a hotel but it would still deliver some economic growth during construction and from the operation of the commercial uses on the ground floor. This has been assessed by the consultants appointed by the LPA to review the economic benefits of the scheme who conclude that in terms of a summary of all benefits, the number of jobs would be

reduced from 116 to 47 this would generate £1.4m less in wages and £1.7m less GVA per year. This would on a proportionate basis reduce the economic benefit by over a half.

268. Such a scheme may have the capacity, through greater profitability, to deliver more in the way of wider regeneration enhancements. It also needs to be recognised that achieving investment and new hotel accommodation in this location may act in a way to deflect investment from other hotel sites. After all, there is no shortage of hotel sites in Torbay just a lack of interest in bringing them forward.
269. This point emerged as a common theme in consultation and the consultants were asked to consider to what extent deflection of investment was likely to affect other players in the tourist sector. They did not consider it significant: in an extreme case a competitor operating at their margins might be forced to close but it may also spur existing hotels to 'up their game' and respond with renovations of their own.
270. The transformation secured by the development of Abbey Sands shows that a similar essentially residential scheme can secure economic benefits and regeneration. It must be acknowledged however that there is no certainty that such an application would be forthcoming, it would introduce further delay in resolving the future of the Pavilion and would not secure such a robust future use for the building.
271. To conclude, the benefit of restoring the Pavilion (albeit with a less secure future) can be achieved in a less harmful way although it won't deliver the same scale of economic benefit and may involve further damaging delay in securing the future of the Pavilion.

7. Is the harm mitigated by the scale of public benefits?

272. The report has so far concluded that the scheme will have a significantly harmful impact on the historic environment. S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas and that there is a strong presumption against planning permission being granted in the event of harm whether it is substantial or less than substantial. This has to be the first consideration.
273. Paragraph 134 of the NPPF does allow, once this duty has been fully taken into account, to weigh the harm against the scale of benefit and to make a decision accordingly. In this context, it has to be accepted that delivery of a scheme on this site of a tourism related use will guarantee the future of the Pavilion and deliver clear economic benefits. The quality of the scheme has been improved particularly with regard to the range of public realm improvements and its capacity to drive a 'place making' or transformative scale of regeneration. It has also evident that a different package of uses would achieve some of those key benefits but in a way that would minimise the impact on the historic environment.
274. Approval can be justified providing the decision maker is satisfied that the scale of harm is outweighed by the public benefit. If the scale of harm is less than substantial then the test is less onerous. This is a matter of judgement and there is no consistent view

emerging from consultees. Historic England consider the harm to be less than substantial but still significant, The Victorian Society consider it to be substantial. The Devon Gardens Trust find it unacceptable but for different reasons to the others. Officers concur with Historic England that the degree of harm is less than substantial although still significant.

275. It is necessary therefore to weigh the public benefits against the harm.
276. A compelling case for the development has to be:
- A more speedy resolution to the future of the Pavilion and its more robust and guaranteed future as the 'front of house' serving the hotel.
 - The delivery of a 4* hotel and new commercial space with all the attendant economic benefits this will bring. It will help put Torquay on the map, deliver jobs, increase visitor numbers and drive local economic growth and vibrancy.
 - The regeneration of the currently rather run down and unattractive harbour edge and wider public realm improvements which will help deliver place making regeneration.
277. Against the development is the very real harm to the historic environment.
278. This arises essentially from the fifth storey of the 'terrace building' and the top 3/4 stories of the tower building. If these elements were removed the building would be similar in form and size to that which emerged from the initial Urban Design Study as forming an acceptable form of development compatible with the character of the conservation area. It also reflects that which would be delivered if a wholly residential scheme were pursued on the site. It would also be more consistent with suggestions made by consultees about a more suitable scale of development.
279. Is the fifth storey on the terrace building and the top 3/4 stories of the tower building a price worth paying for the hotel with its attendant economic benefits and a confident long term future for the Pavilion?
280. This is a very hard judgement call and Officers find on balance, given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.
281. However this is a very finely balanced judgement and it is entirely legitimate, having considered all the matters raised in this report for Members to decide to give greater weight to the need to preserve and enhance the character of the Torquay Harbour Conservation Area, the settings of adjacent Listed buildings and the Registered Park and Garden and to consider that the development should be refused planning permission.
282. There is no right or wrong answer, it is a judgement based on the scale of harm against the public benefit and reflects whether priority should be given to a proposal that will

generate economic benefit over preservation of the historic character of the town.

283. There are, however, a number of other matters to consider in terms of reaching a decision on this application.

8. Is the loss of Cary Green to provide car parking acceptable?

284. The loss of Cary Green to provide car parking is a hugely significant issue particularly for local people. The objections in summary relate to the physical loss of the green space, its replacement by car parking, the impact this will have on the character of the Conservation Area and the setting of adjacent listed buildings, it is questioned why it is necessary given the existing MDL car park is not often used to capacity as evidenced by the fairly consistent use of the existing top deck of the car park for public pay and display parking, why more 'shared use' of MDL's existing car park has not been considered to meet the needs for car parking and why spaces in adjacent underused car parks could not be used.
285. The scheme provides for the removal of all planting and structures within Cary Green. It is proposed to be resurfaced, include some tree planting and laid out to provide, in the revised scheme, 69 car parking spaces. 32 spaces are allocated for the hotel to use on a permanent basis and the balance for MDL to use on a seasonal basis.
286. The applicant contends that the provision of this scale of parking is essential to delivery of this project.
287. Cary Green is not within the curtilage of the Registered Park and Garden nor does it benefit from any statutory landscape protection.
288. In relation to the value of open space per se, it is recognised as being of intrinsic value from a health perspective and paragraph 74 of the NPPF indicates that 'open space, sports and recreational buildings and land should not be built on unless there is an assessment to show it is surplus to requirements and it would be replaced by other better provision. The focus of this policy is in relation to retaining land and buildings which encourage sports and associated activity which is not the primary function of this site. It is also not lost beneath buildings but could remain in use as public space for a proportion of the year.
289. Nonetheless, its 'value' in terms of the contribution it makes to the recreational needs of the area has been assessed by the Principal Natural Environment Officer as part of a wider review who finds that Cary Green is essentially a 'transition' rather than destination space and given its future use, which includes public access and its proximity to Princess Gardens he does not consider the development to cause detriment to the availability of open space. He does point out some design changes and refinements which would help the area to continue its function as a transition space and makes suggestions which would enhance its use for events and markets.
290. The main value of the site is its contribution to the character and appearance of the Conservation Area and in creating a valued setting to the adjacent listed buildings which

frame it on three sides. These are 1 Palk Street, 3-15 Vaughn Parade and the Pavilion itself. It is therefore of heritage significance.

291. Historic England raise no objection to its loss nor did the DRP in considering the various proposals for the site. The Victorian Society consider its loss to be of significant concern as does the Theatres Trust although it is not their statutory function to comment on townscape issues.
292. In policy terms, the assessment is the same as that for the development as a whole. Development should 'preserve or enhance' but some harm can be weighed in the balance if the harm is deemed to be less than substantial and there are key public benefits.
293. It is also necessary to consider what local plan policies suggest in respect of car parking in relation to these specific uses and what provision there should be in a town centre location such as this.
294. Policy TA3 indicates minimum thresholds for car parking for the uses comprised within this application. Overriding this however, the policy states that there is no specified minimum threshold for town centre uses. It says that in general, existing car parks and on-street car parking will be able to service new development and that car free development will be permitted within town centres where there is good access to public transport and the potential to utilise spaces within existing car parks. On site provision would only be in exceptional circumstances where a change of use could lead to problems with overspill and discriminate parking.
295. There are a number of issues to consider therefore, is the parking necessary to the delivery of the development, is it acceptable in terms of the thrust of town centre parking policies, is the character of the Conservation Area and the setting of listed buildings adversely affected, what is the scale of harm, can this be mitigated and does it secure a public benefit?
296. It is claimed to be necessary from the applicant's point of view and essential for delivery.
297. MDL currently have 235 car parking spaces on two decks. 126 on the lower deck and 109 on the upper deck. This serves 300+ berthholders and in in peak months, a minimum of 214 spaces is apparently needed.
298. Following redevelopment of the site, 134 spaces will be available on the lower deck and only 81 on the upper deck. 43 of these are allocated to serve the residential flats leaving 38 'residual' spaces which will, as is currently the case, be used either for MDL berthholders or public pay and display if not needed for operational purposes.
299. To meet the minimum 214 spaces MDL claims is necessary to meet berthholders needs, it was proposed to include 42 overspill spaces for MDL on Cary Green along with 32 spaces for the hotel.
300. Evidence has been requested for many months now to support the underlying claim that

214 spaces is an operational minimum for the Marina in peak weeks and to help define when their peak demand is. This should be fairly easy to confirm from MDL's own records and from occupancy levels for the existing car park.

301. Observation suggests there are very few occasions even during the busiest part of the summer period when the existing MDL car park is used to capacity for operational purposes. This would suggest that there would be periods of time, particularly out of these peak weeks when there is capacity within the existing MDL car park for more shared use of spaces.
302. The use of spaces in nearby underused car parks such as Fleet Walk is also promoted in the Local Plan. The applicant considers this would be inconvenient to beholders potentially affecting the long term viability of the Marina.
303. The inclusion of parking to serve the residential flats is considered, by the applicant to be important from a viability point of view as convenient secure parking will increase the value of the flats. The future success of the hotel is claimed to be heavily reliant on the availability of car parking close by.
304. Whilst these requirements might be valid, there is no reason why a more effective use of the existing MDL car park should not be given greater consideration as it would substantially reduce the scale and frequency of occupation of Cary Green, would thus comply more closely with local plan requirements and to some extent mitigate local objection.
305. Notwithstanding in principle objections to the level of car parking, Highway Officers have raised specific concerns about pedestrian/cycling conflicts which are generated by the use of Cary Green for car parking and have requested design modifications to reduce conflict. They also raise a need for modelling of traffic flows in relation to the mini roundabout if car parking is included on the site.
306. Any parking will need to satisfy requirements in relation to disabled drivers and the provision of electric charging points and there will be a need to include provision for cycling to ensure that the site is developed in as sustainable way as possible.
307. In terms of the impact on the Conservation area and setting of nearby listed buildings, and in recognition of the strength of public feeling, officers sought to find a compromise to the future of Cary Green in terms of its design and management to deliver more of a public space and to confine its use to those times that were shown to be operationally necessary.
308. The concept of a 'French Square' with a good quality hard and soft landscape scheme, trees and good quality street furniture would create a space that could accommodate overspill car parking when required but would otherwise lend itself to recreational use, allow it to be used for events and markets and would, depending on the quality of the final scheme and the extent and nature of the parking deliver a place that would not harm the Conservation Area or the setting of listed buildings.

309. It is essential therefore to consider whether the quality of the scheme is good enough and whether the public use of the space is guaranteed in any meaningful way.

9. Is this loss mitigated by the quality of the replacement scheme, the proposed public use of the space and is this secured in any meaningful way?

310. There have been long term outstanding issues with regard to the quality of the space, the degree to which the public are guaranteed access to it and the heads of terms to secure this.

a) Quality of the Replacement Space.

311. As originally submitted the design of the replacement space did not lend itself to public use and enjoyment at times when not in use for parking. It left an irregularly shaped area which would have been the space the public would have had the ability to 'use' as a public space and for events. It did not have any of the qualities that a successful public space should have. It had no relationship to its surroundings, no focus and was simply 'left over' space. In terms of finish, it was proposed to use bound gravel for surfacing the car park and to do little to the adjacent areas of public realm leaving a 'patchwork quilt effect' of varying surface treatments.

312. It was not considered that this approach was good enough. The gravel finish was neither robust enough for the likely use or visually appropriate for this context and the lack of a comprehensive response to the treatment of this new space meant the visual quality of the space was poor with adverse impacts on the historic environment.

313. In response to this concern the applicant suggested an alternative of 'conservation grade tarmac' across a wider area which was even less suitable as an approach for this sensitive location. It was suggested to the applicant that the resurfacing should be extended to include the wider area in a more comprehensive and cohesive approach to improve the setting of listed buildings and that it should include natural stone setts and granite paving to tie in more closely with the local palette of materials and those to be used immediately adjacent to the Pavilion.

314. Such an approach was supported by the Principal Natural Environment Officer but the applicant considered this unaffordable and unnecessary.

315. This position has recently been modified and the resurfacing is now to be wholly in granite setts and paving and the treatment is to be extended to the frontages of adjacent listed buildings replacing the existing herringbone setts and overcoming concerns about the 'patchwork quilt' effect. Whilst this is acceptable as a matter of principle there are a number of design matters that need further thought, for example, whether a darker colour

stone would be preferable in terms of reducing staining, the species and layout of hedging and trees, the quality of the street furniture and some physical means of controlling random parking. These matters could be secured by condition.

316. As has been noted in previous sections, the extent of resurfacing could be usefully extended to include the area between Offshore and the new stone work abutting the northern elevation of the proposed building and alongside 1 Palk Street. As explained above, it is suggested that the extension of resurfacing abutting the northern elevation of the new building is delivered upfront whilst the latter is included as a 'deferred contribution' to be delivered if the profitability of the scheme is better than anticipated.
317. The design of the space is also rationalised to provide a better relationship to existing routes and focal points which will facilitate and encourage public use of a majority of the space when not needed for car parking. This revised layout concentrates hotel car parking to the west of the site adjacent to the busy road and on an axis with the Pavilion and the more sporadic MDL berthholder parking to the eastern part of the site.
318. Following agreements in relation to the car parking strategy this space will only be available to MDL for parking during the Easter weekend, June July and August and only then when the whole of the MDL car park is fully occupied by MDL berthholders. Thus the eastern part of the new space will be available for the public to use for a majority of the year.
319. The previous layout generated conflicts between the car park layout showing 74 spaces and the proposed landscape scheme with insufficient space available for trees to be planted yet alone survive. These concerns have been ameliorated in the revised layout and the design now reinforces the public nature of the space and underpins the 'overspill' nature of the car parking.
320. In terms of highway comments, they consider that the revised scheme eases conflicts inherent in the previous layout but wish to see provision for disabled users and electric charging points introduced along with adequate provision for cycle parking. They consider that pedestrian safety needs further thought and can be achieved with bollards/changes in surface material. They have no in principle objections to the kerb modifications but require modelling/more detailed plans for confirmation.

b) Proposed public use.

321. The use of the space for parking needs to be tied to that which is shown to be necessary for operational reasons and for as restricted a period as possible in order to comply with town centre car parking policies. The submitted car park strategy indicated in summary that Cary Green could be used for car parking by MDL during peak months defined as March- October when the existing car park was 80% full and by the hotel for 12months of the year.
322. A more detailed assessment of operational need was requested to help define when peak months were and to assess whether the needs for car parking could be met though more

shared use of the existing car park. This information has been requested since the original application was submitted in 2014.

323. In the absence of any reliable data confirming the scale of use of the MDL car park it was put to the applicant that the peak weeks should be confined to those times that are
324. demonstrably busy i.e. Easter weekend June July and August (rather than March-October) and that MDL should not occupy any spaces on Cary Green unless both decks of the MDL car park are 100% occupied by berthholders (i.e. no pay and display use) and that outside this defined period these areas are primarily devoted to public use. It was also suggested that the hotel car parking should only take place on Cary Green during the defined summer period and that outside this time hotel car parking should be accommodated within the existing MDL car park. This would free the whole of Cary Green for public use and enjoyment for a more substantial part of the year.
325. The applicant has agreed to the more restrictive periods of occupation for MDL but has not agreed that the hotel car parking should use the existing MDL car park outside the defined peak weeks. The applicant claims it is essential that hotel guests can park on the spaces allocated for hotel use on Cary Green all year long and the matter is non-negotiable.
326. It must be noted that no firm evidence has been supplied regarding the ability (or otherwise) of the MDL car park to accommodate the hotel car parking outside the peak weeks which would lend some support for the need for Cary Green for hotel car parking during the winter months. However the revised strategy, whilst not ideal, does mean that the eastern part of Cary Green is only used for car parking for restricted periods and only when there is a clear operational need as Cary Green cannot be used unless berthholders occupy 100% of both decks of the existing car park.
327. This revised strategy would in effect exclude public 'pay and display' use of Cary Green which would be significant from a planning point of view. The loss of this valued green space would be difficult to justify to provide public car parking which is not exactly in short supply in the area.
328. There will be a need to monitor the use of Cary Green to ensure compliance with the strategy and to ensure that 'valet parking' does not result in the hotel spaces being 'bank parked' to allow inclusion of more than 32 vehicles. This will need to be dealt with by conditions and an appropriate monitoring contribution to be included in the s106 agreement.
329. The use of Cary Green for parking is only supportable in policy terms if the quality of its design is exemplary, if there is evidence to support operational need that cannot be accommodated through shared use of existing facilities, it shown to be clearly necessary for delivery of this scheme and the use of Cary Green for overspill car parking is minimised.
330. It is considered that following recent improvements to the quality of the scheme and the revised car parking strategy which secures use of Cary Green (generally) when

operationally required then the scheme is now acceptable and represents a significant improvement on the original submission.

331. Whilst the scheme in relation to Cary Green is now considered broadly acceptable it could be improved if the grass verge alongside Cary Parade were included within the application site. This would allow the permanent hotel car parking to be shifted towards the Cary Parade which would maximise the amount of space to be made available primarily for public use. It would be important however to introduce hedging and substantial tree planting along the back edge of pavement to screen the visual impact of vehicles. The inclusion of this additional space would also allow better provision to be made for bin storage for the commercial units on Vaughan Parade which currently occupy the foot of the Ziggurat.
332. It may also be possible to re-use some of the existing Palm Trees in the proposed soft landscape scheme which would provide some landscape continuity.
333. In addition to the major issues as set out in sections 1-9 above, there are a number of design and functional concerns, these are:
- 10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises or create wind funnelling?**
334. This has been a key concern for many respondents and climatic studies have been requested for many months to show to what extent the building will overshadow nearby premises and whether there will be any impact on wind funnelling.
335. The impact of shadowing on the harbour and on adjacent premises was originally evaluated using the 3D model for a series of times throughout the day for the 21st June and the 21st September. The images show little overshadowing in mid-summer with the lower terrace block shading only the car park and the new walkway.
336. According to this study, the shadow of the tower element passed over a corner of the Pavilion in the early morning and only shaded the development itself without affecting other properties.
337. The shadow of the tower was shown to reach across the inner harbour only after 7.00 pm an hour before the sun retreated behind Waldon Hill. This appeared to confirm that only a small part of Victoria Parade was shaded for a relatively limited period of time in the late evening with all areas north of Harbour Point unaffected.
338. However it was considered necessary to have this more robustly tested due to the scale of concern.
339. More detailed climatic studies were submitted in January 2017.
340. In relation to daylight, it is shown that adjacent properties are generally not adversely affected but that five window locations on the south facing façade of Offshore are affected

by the development along with three window locations on the south east elevation of the Pavilion. The report concludes that the degree of harm is low with only 1% of assessed locations not meeting minimum guidelines. In terms of sunlight, the report concludes that all window locations tested are acceptable when judged against industry guidelines. However, this does not deal with the impact of daylight or sunlight on public spaces only the impact on windows.

341. In relation to wind funnelling, this finds that the tower represents an obstruction to prevailing south westerly winds over open water and that faster moving upper level winds 'impact the façade' and are drawn to ground and podium levels as downdrafts and subsequently channelled along the building front and accelerated locally around building corners. It finds that the impact of this is mainly felt within the development itself on the car park deck, some balconies and on the public route at the podium of the tower. It suggest mitigation in the form of increased landscaping, raised balustrades, balcony dividing screens. It suggests that the areas removed from the building are little affected by the impact of wind.
342. It is disappointing that the information supplied particularly in relation to shadowing doesn't deal with the impact of the development on the enjoyment of 'spaces' given the harbour side is valued by the public for its wider amenity value. Specifically the impact on the outside 'café' space associated with Offshore was asked to be investigated along with any shadowing of Victoria Parade. The applicant has been requested to provide some updated information in relation to this so that the full impact is understood. However, it is unlikely based on the preliminary studies considered that it would be of a scale to justify a refusal of planning permission.

11. Is the construction likely to adversely affect the listed quay walls?

343. Piled foundations were installed when the existing car park was constructed and it is anticipated that these can largely be used to support the new development minimising any impact on the listed quay wall. The same structural engineers, Ove Arup, have been commissioned to provide advice and there is no suggestion that this will present any threat to the quay. However a geotechnical report should be secured by condition.

12. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?

344. An advantage of this scheme is that it provides a new use for the Pavilion as front of house for the hotel. Clearly this requires it to be physically linked to the hotel and numerous options have been considered for minimising the visual impact of this structure. The current location for the link is acceptable as it has minimal impact on the fabric of the listed building being attached to a more modern extension constructed in the 1980's and is largely viewed in the context of a modern car park.
345. The link however does include displaced bedrooms which are attached to both sides of the pedestrian link thus creating a more dominant structure than originally anticipated. The quality of the design is therefore crucial and to lighten the impact of the structure, the

link is separated from the listed building by a lightweight glass box and the sides are decorated with vertical copper fins.

346. The applicant has agreed to include a similarly recessed glazed box to the opposing end of the link to give a more balanced appearance. It is important to review the effectiveness of the copper fins in terms of visually integrating this structure. It is also important to carefully consider the underside as this will be widely viewed. The plant previously located on the roof has been relocated.

13. Is the width and design of the new waterside walkway acceptable?

347. The existing walkway along the harbour side is quite narrow and bounded by the existing car park. One of the potential benefits of this scheme is the opportunity to upgrade the quality of this experience. It is proposed to include A3 restaurant uses opening onto an elevated terrace at a half storey above the existing walkway and to link the two with a series of terraced timber steps and ramps. It is also intended to widen the existing walkway by 300mm through a small extension of the walkway over the Harbour wall. This will introduce a more modern finish to this part of the harbour in terms of materials and enclosure. The principle and design is not favoured by several objectors on the grounds of its untraditional appearance and the creation of pinch points.
348. The applicant has supplied further information in respect of the pinch points which shows that the existing walkway reduces down to 1.7m in places which is approximately the same as the narrowest points in the proposed walkway. The width cannot be increased due to the constraints set by the building. It is also the case that over a significant part of its length there is greater width (albeit on varying levels) than exists currently and it presents a much improved pedestrian experience.
349. The detailed design of the walkway is in need of clarification and a key area of concern, the loss of the traditional bollards can be mitigated as explained in section 3.
350. In summary, the bollards, which are attached to the quay have to be removed as the new walkway is elevated above and extends 300mm out from the existing harbour edge. This necessitates the use of a more modern lightweight enclosure to the harbour more akin to that used along Beacon Quay.
351. If these bollards are used to replace the existing poor quality galvanised railings that enclose the southern edge of the harbour and the opportunity taken to rationalise the poor quality railings running alongside Fish Quay to create a more visually consistent and integrated form of enclosure extending up the bridge then the impact of the loss of the bollards in this location would be fully mitigated.

14. Does the scheme generate Highway concerns?

352. The impact of the scheme on the highway network has been assessed and it was requested that modelling of the roundabout should be carried out if parking took place on Cary Green. Any modifications necessary to its layout can be secured via a S278 Notice.

The revised layout for Cary Green better resolves cycling and pedestrian conflicts and the need for cycling, electric charging points and spaces for disabled users can be secured via condition.

- 353. Provision for servicing and storage of waste are reflected in the submitted plans and is mainly accommodated within the remodelled MDL car park but a servicing plan, along with tracking information is required which will ensure that deliveries, collections and waste removal are carried out in a way that minimises impact on the public highway.
- 354. There a number of technical issues that need to be briefly considered.
- 355. In respect of flood risk, the EA and the Councils Drainage Engineer are satisfied that if the scheme is constructed in accordance with the submitted Flood Risk Assessment then the risk of flooding is not worsened.
- 356. In respect of the relationship to the Marine SAC and the need for a Habitat Regs. Assessment, Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitat.
- 357. An EA screening exercise has been carried out which confirms that an EA is not required.
- 358. There are no outstanding contamination issues. The site was largely cleared of all possible contaminants when the car park was constructed in the 1980's.

S106/CIL -

- 359. The scheme should, if shown to be viable, deliver on site Affordable Housing and Community Infrastructure Contributions in line with Policy H2 in the Torbay Local Plan the Adopted SPD 'Planning Contributions and Affordable Housing'. This should deliver 20% affordable housing to be policy compliant. The cost of this if an off-site contribution was agreed coupled with the community infrastructure contributions would amount to approximately £2m.
- 360. The IVA demonstrated that the viability of the scheme precludes meeting this requirement. Any increase in the size of the building to generate the extra profit would increase the harm on the historic environment.
- 361. As explained in the body of the report it was considered more appropriate in view of the need to achieve regeneration of the site, that any surplus profit should be invested in delivering an improved public realm which is the course followed.
- 362. As the scheme will not be providing Affordable Housing or other sustainable development contributions as required by the SPD, viability must be re-assessed towards completion of the scheme, when actual figures are available. If the scheme turns out to be more profitable than originally anticipated, 'deferred contributions' will be payable. In order to mitigate the effects of the scheme the deferred contributions will be used by the Council as contributions towards future public realm enhancements in the vicinity of the site.
- 363. The site would be liable for CIL if the decision is not issued by the 9th May. This would

amount to £260,000 which would probably prevent the scheme being implemented. This does mean that matters have to progress quickly.

- 364. As has been identified in the text of the report, the s.106 will ensure that the high end hotel user is guaranteed along with securing local procurement and labour/service agreements.
- 365. Securing public access to and use of Cary Green for events should be reflected in the s106.
- 366. Given the condition of the Pavilion, it would be preferable to see renovation works started earlier in the process than currently offered. It may be necessary to consider a Performance Bond or other means of ensuring delivery in the event of financial problems.
- 367. The public realm improvements can largely be secured via a S278 notice and suitable conditions, the financial contributions towards the Princess Gardens enhancements will have to be secured via the S106 agreement as will any deferred contributions towards resurfacing Fish Quay and/or extending the resurfacing of Cary Green and/or the removal of the Ziggurat and its treatment or other town centre public realm improvements.
- 368. A monitoring contribution towards ensuring the use of Cary Green is in accordance with the conditions and terms of the car parking strategy will be needed as will an agreement to ensure that the developer permits use by the public
- 369. Any works deemed necessary to the mini roundabout to accommodate parking on Cary Green will either have to be secured through the terms of the S106 agreement or via a s278 notice.

Conclusions

- 370. The fact of harm to the historic environment cannot be disputed. It is evident in the responses of statutory consultees, concerns from local residents and the applicants own consultants who acknowledge a level of harm.
- 371. There is a debate about whether this is 'substantial' or 'less than substantial' but whatever the level of harm decision makers must understand that there is a duty on them to preserve and enhance listed buildings, their settings, Registered Gardens and Conservation Areas all of which are compromised to some degree by this proposal. There is therefore a strong presumption against planning permission being granted.
- 372. Paragraph 134 of the NPPF does allow some harm to the historic environment providing the harm is outweighed by the public benefits of the proposal. The level of benefit necessary to justify overriding the presumption against granting approval should be broadly commensurate with the degree of harm. Substantial harm to the historic environment would require wholly exceptional public benefit, less than substantial harm a lower scale of public benefit. However it is not a simple balancing exercise but the need for a clear justification to override the presumption in favour of preservation.
- 373. The extent of harm is a matter of judgment. Officers concur with Historic England that the

harm is 'less than substantial' but still significant and therefore requires quite an exceptional scale of public benefit to justify approval.

374. In terms of public benefit the scheme delivers:

- The restoration of the Pavilion for a beneficial purpose that will secure its long term future.
- A top end 4* hotel that will significantly enhance the tourist attraction of the town, deliver jobs and economic growth.
- Creation of a more active edge to the western flank of the harbour in place of the existing poor quality car park.
- This in turn will facilitate further investment and confidence in an area in need of regeneration.
- 43 new dwellings that will provide new homes bonus income to the Council
- The predicted provision of 179 jobs and an uplift of 1% in the tourism sector of Torbay.

375. In terms of 'harm' the scheme would:

- Have a 'significant' impact on the quality of the historic environment though impact on the setting of listed buildings, on the Registered Princess Gardens and on the character of the Conservation Area.

376. This impact largely arises from the fifth storey of the terrace building which impedes public views between the harbour and Princess Gardens and the top 3/ 4 stories of the tower element of the proposal which creates an imposing presence and inevitably impacts on a range of public views.

377. The IVA identified that there wasn't sufficient profit in the scheme to appreciably reduce the scale or bulk of the building but there was enough profit to achieve a full developer return and to deliver a 'better' scheme particularly in terms of the quality of spaces surrounding the building.

378. It was considered essential, if a scheme of this size was to be acceptable that it delivered a place making or transformative scale of regeneration. This has now been secured which helps tip the balance.

379. In line with tests in the HE Enabling Guidance and Historic England's advice, consideration was given to whether these public benefits could be secured in a way that minimised the level of harm on the heritage asset. The IVA identified that the hotel is relatively low value which drives the need for a large number of higher value flats to subsidise the development. This assessment did produce a smaller building which would have a better fit with its surroundings and subject to design had the potential to positively enhance the historic environment by replacing the poor quality edge to the harbour but in a more contextually appropriate way.

380. On the down side, such an option may not come forward and it would inevitably introduce further delay in resolving the future of the Pavilion. Whilst it would fund the structural repairs to the Pavilion it would not have secured such a robust long term future use as front of house for a high end hotel nor would it have delivered the scale of economic benefit in terms of jobs and growth of the local economy.
381. In respect of Cary Green, the recently revised scheme for this space, which involves extensive new granite paving across the whole of the site and the agreement to confine the MDL overspill parking to a defined period and then only when the existing MDL car park is 100% occupied by berthholders overcomes concerns about the visual quality of the space and ensures that public access to and use of the majority of the space is maximised.
382. This is a significant improvement from the initial proposal for the use of Cary Green which involved it being fenced and tarmacked to provide virtually unrestricted car parking for both the hotel, MDL and 'pay and display' parking.
383. There is a clear emphasis on the need to achieve economic growth in the Local Plan (and in the NPPF) which identifies the crucial need to create jobs to lift the economic profile of the Bay. The advice from the TDA about the impact of a refusal of permission on investor confidence is relevant. Recent figures about increased poverty levels and deprivation reinforce the need to put economic growth high up the agenda.
384. Officers are therefore, on balance, of the opinion that the scale of public benefit justifies setting aside the presumption against approval being granted.
385. This position has not been reached easily and reflects the need to achieve a speedy response to the future of the Pavilion and securing a robust and guaranteed future use for it, the importance of securing a 4* hotel and the vital need for investment, jobs and reinforcing the Bay as a premier tourism destination.
386. It is fully recognised in reaching this decision however that the wrong scheme has the potential in the long run to be hugely damaging to the special quality of the place. Whilst officers have sought to deliver the best scheme possible bearing in mind issues around viability and the need for a defined scale of development it is quite legitimate to take the view that the cost of this development on the historic environment is just too high and that the application should be refused and the applicants encouraged to submit an alternative proposal that excluded the hotel and delivered a smaller building that was easier to accommodate in such a sensitive location.
387. On balance, it is the recommendation of Officers that the application be approved subject to further clarification with regard to design detail as explained in the body of the report, conclusion of a s106 agreement and conditions as detailed below.

Recommendation

388. The recommendation covers two options; the officer recommendation which is that on balance approval should be granted and a second option in case Members are minded to

refuse permission.

389. A. On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:
- Opportunities for mitigating the impact of the lift shaft.
 - Confirmation that the balconies will be constructed as a continuous curve.
 - Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
 - Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
 - External plant in relation to listed building.

390. And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.

391. In terms of the S106 agreement:

- To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units (based on Appendix B of the IVA dated 31st August 2016, specifically the Savills estimates of values); or such other method agreed with the applicant (e.g. open book accounting of the entire scheme)
- The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.
- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
- A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
- A commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
- To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
- To secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events

for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.

- To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not ‘bank parked’ as explained in the body of the report.
- To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
- Performance bond (if required).

392. B. However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.

393. It is considered that the development is harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. It will harm key public views of listed buildings eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

394. Conditions

1. Prior to commencement of development the submission and approval of an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works included with the application drawings. The works to be completed in full prior to occupation of any of the proposed residential units.
2. No more than 19 residential units to be occupied until the core and shell of the hotel is completed.
3. Submission and approval of a phasing agreement which includes a timetable for delivery of the public realm enhancements as identified in the report and as included in Plan No.3152-1-17 SK2 rev A (subject to revised plans and any detail required by condition) through a S278 Notice. No occupation of any of the residential units until the public realm enhancements have been completed unless

- a revised phasing plan is agreed in writing with the LPA.
4. Submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair, reinstatement of key features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme.
 5. Prior to commencement of development to secure a signed lease or other legally enforceable means to ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed).
 6. Large scale details of key features
 - A) Windows/Doors
 - B) Shopfronts
 - C) Aluminium framework confirming construction as a continuous curve rather than faceted and detailing joints/relationship with main structure
 - D) Balconies confirming construction as a continuous curve rather than faceted and detail of handrails/ fixings
 - E) Eaves/roof profiles
 - F) Fascia's/Soffits/rainwater goods
 - G) Elevations of fifth storey
 - H) Underside of balconies/bedroom link
 - I) Louvres/screens
 - J) Screening measures for bedroom link.
 7. Samples or detailed specification of all materials to be used in construction of the building and all hard surfacing.
 8. Full details of all public realm enhancements included in Plan No. 3152-1-17 SK2 rev A and full details of the proposed harbour walkway including strategy for mitigating loss of traditional railings. The detail to be based on the submitted concept plans.
 9. Full details of works to Cary Green to include:
 - a) Specification of materials to be used including colour and treatment to avoid staining
 - b) Specification, size and species of tree and hedge planting including 10 year maintenance regime. Proposals to include more substantial tree planting along Cary Parade and relocation of the trees provided to screen views of the car park to fully enclose the proposed car parking spaces. Consideration of re-using existing planting
 - c) Details of tree pits and all street furniture
 - d) The means of managing fly parking through appropriate design
 - e) Inclusion of measures to protect pedestrian safety, provide for disabled users, include electric charging points and satisfy cycle parking standards.
 10. Full landscape details including species, sizes densities and 10 year management

regime and securing implementation in line with agreed schedule.

11. The restriction of use of Cary Green in line with agreed strategy, namely to only allow the use of the area allocated for MDL overspill car parking during the Easter weekend and throughout June, July and August only and then only when both decks of the MDL car park are 100% occupied by berthholders.
12. To ensure that hotel car parking is restricted to defined car parking bays only and that valet or bank parking on this space is prevented from occurring.
13. Implementation of all vehicle parking including cycle parking, provision of spaces for disabled users and electric charging in line with adopted Local Plan policy prior to operation of the hotel or occupation of the proposed flats.
14. Full details of all plant and extract systems in relation to the use of the site for hotel and commercial purposes including external appearance and measures for satisfying the EHO with regard to odour control and noise emission.
15. Details of soundproofing of the residential flats to mitigate noise nuisance from the operation of A3 uses.
16. Details of shopfronts including a strategy for consistent signage across the entire site.
17. Servicing and refuse plan across the whole site including tracking information to confirm access by larger service vehicles.
18. Submission of revised Travel Plan to reflect the 30% target required by Strategic Transport and including measures to secure implementation and review.
19. Modelling of roundabout and implementation of any works deemed to be necessary to ensure highway safety via a S278 Notice prior to use of the car park.
20. Construction Management Plan to be in place prior to any works including permitted hours for demolition, piling or clearance taking place on the site.
21. Submission of a Geotechnical Report in relation to the impact of development on the quay walls.
22. The submission of details to secure the provision of adult changing facilities within the scheme in accordance with 'Changing Places' guidelines as agreed in the applicants email of the 25th January 2017.
23. Implementation of the approved FRA.
24. Submission of sustainability statement to demonstrate how the proposal meets the requirements of policy SS14 in the Local Plan.

25. Timetable for re-instatement of statue.
26. Any mitigation required to balcony design/soft landscaping to deal with wind impact.
27. Sample panel of stone to be made available for approval.
28. Restriction of the use of commercial floor space i.e. A1, A2, A3.
29. Prohibition on the siting of satellite dishes on the building by flat owners.
30. Lighting strategy for the building and public realm.

Application Number

P/2015/0962

Site Address

Torquay Pavilion And Marina Car Park And
Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Mr Alexis Moran

Ward

Tormohun

Description

Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016).

Executive Summary/Key Outcomes

The Pavilion is a Grade II listed building prominent within the Torquay Harbour Conservation Area. It was constructed as a theatre although it has been put to a range of alternative uses since.

It was last used for retail purposes but been vacant for several years and is now in a very poor condition

Its restoration and conversion to provide a front of house facility for the 60 bed hotel included in the partner application P/2015/0961 would be considered a clear public benefit of the wider development proposals.

The proposal includes repair and restoration of the building and use for hotel reception, restaurants, bars, pool and spa.

The application relates only to the physical works to the building to facilitate the use for hotel purposes and includes works to the listed quayside.

The removal of the retail units opens up the central auditorium in a more sympathetic way and allows the original quality of this space to be better appreciated.

The use of the Pavilion for a front of house for the hotel is a good use for the

building and is 'applauded' by Historic England. It delivers a sustainable use that will guarantee public access and secure its long term maintenance.

There are some practical and technical matters that require resolution which can largely be dealt with by condition. The only matter of substance that should be dealt with in advance of a decision being issued is confirmation that the ventilation and extract systems that the uses will demand can be sympathetically included.

Recommendation

That listed building consent be granted subject to a) the receipt of details which demonstrate that the extract and ventilation requirements of the pool, spa and restaurant uses within the building can be accommodated without harm to the internal character of the building or to its external appearance and that the impact of warm humid air on the stability of the plasterwork can be mitigated and b) to the following conditions.

* To secure an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works and reinstatement included with the application drawings. The agreed schedule of works to be implemented in full prior to any occupation of the proposed flats included in the sister application P/2015/0961.

* Submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair and reinstatement of key features as secured in the schedule of works pursuant to condition 1 and as described in the application drawings. This document to include large scale details as appropriate of all works of repair and reinstatement of external and internal features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme.

* Details of all partitions showing final position and relationship to the internal structure of the building and showing inclusion of glazed panels as appropriate to maintain the open character of the main auditorium.

* Submission of a structural survey to confirm that the long term stability of the quay side can be assured.

* Submission of a full photographic record of all key features along with any exposed during conversion.

* Full details of the proposed relocation of the traditional bollards along the quayside.

Statutory Determination Period

The statutory determination period expired on the 3rd August 2016. There is an agreement to an extension of time in relation to the wider development.

Site Details

The Pavilion is a Grade II listed building. It is prominent within the Torquay Harbour Conservation Area and was constructed in 1911 on the newly reclaimed land of Princess Gardens. It was designed to form a backdrop to the pleasure gardens. Its most recent use was for retail purposes but it has been vacant for several years.

It was an innovative building at the time of its construction, conceived as a complete steel frame from the foundations upwards. The steel frame was then built into the external walls which were constructed of faience blocks and brickwork. The building now suffers from severe water penetration which has led to the steel work becoming corroded and damage to the faience tiles.

It is now in a very poor condition and its restoration has been a key driver in pursuing development proposals on the wider site. These are also for consideration today and comprise the construction of a hotel and 43 flats on the harbour side with use of the Pavilion as a front of house for the hotel, including a spa, bars and restaurants.

Detailed Proposals

This application relates to the physical works to the structure of the Pavilion to facilitate its use as a front of house facility for the hotel and for works to the quay side to construct the new hotel and flat complex on the listed quay walls. It also includes removal of the existing bollards. A schedule of works to the building to achieve its restoration is included but requires further detail and clarification.

Summary Of Consultation Responses

The Statutory consultees, which comprise Historic England, the Victorian Society, Devon Garden History Society and the Theatres Trust have commented on the wider redevelopment proposals for the site and only Historic England and the Theatres Trust have commented specifically on the detail of the listed building application.

Historic England applaud the intention to provide a long term sustainable future for this listed building but question the need to introduce further subdivision to separate the restaurant, spa and hotel lobby. They would prefer the use of part

solid divisions that include glazed panels to better preserve the internal quality of the building. It is suggested that this detail could be secured by condition.

The Theatres Trust raise significant concerns regarding the use of the southern end of the building as a pool and spa facility particularly the impact of warm and humid air on the stability of the internal plasterwork. They would encourage the enlargement of the central void and question the location of function room doors. They question the design of the bedroom bridge link and wish to see a condition imposed in the event that listed building consent is granted to secure a full internal photographic record of the building.

The Victorian Society only comment that the harm of the wider development is not outweighed by the benefit of proposals to secure the future of this listed building.

Summary Of Representations

Similarly in respect of representations, the majority of comments received relate to the wider proposals for the site and few letters comment on the specifics of this particular application.

The comments that have been made relate to the impact on the internal quality of the building, on the character of the quay walls and whether they can withstand the impact of construction works, the suitability of the building for the proposed use and the impact of the bedroom link on the architectural and historic character of the listed building.

Relevant Planning History

This application is partnered with P/2015/0961 which deals with the planning aspects of this proposal.

The history of its inclusion within wider development proposals for the site is explained in the accompanying planning report.

Its most recent use was for retail purposes.

Key Issues/Material Considerations

In terms of policy and principle, s 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on LPAs to give considerable

weight and importance to the desirability of preserving listed buildings and any features of special architectural or historic interest and their the settings.

Paragraphs 131-134 in the NPPF and Policy HE1 in the Adopted Local Plan translate this statutory position to national and local planning guidance.

The key issues are the impact of the conversion to hotel use on the internal quality of the building, the impact of the spa use on the internal layout and on plasterwork, the impact of ventilation and extract systems, the adaptation of the eastern facade to accommodate the bedroom link, the scale of restoration work and the impact of construction on the quayside.

Each matter will be addressed in turn.

1. The impact of the change of use on the internal quality of the listed building.

The internal character of the building is compromised by the works carried out in converting the Pavilion to retail use in the 1980's. These will largely be removed and there will be a greater ability to read original form and quality of the central auditorium.

Historic England have questioned the need for some of the proposed partitioning but have suggested this matter could be resolved via a condition to ensure that where partitioning is shown to be necessary it could be mitigated by the inclusion of glazed panels. It is thought this represents an appropriate way forward in terms of ensuring that the character of the space is preserved.

2. The location of the pool and spa and impact on the internal plasterwork.

The pool and spa are proposed to be located in the southern end of the building. This location does impede access through the building to a public space to be located between the Pavilion and the Promenade. However, it is an important facility within the hotel offer and there are limited alternatives available.

What is of more concern is the potential impact on the elaborate internal plasterwork from the humid atmosphere.

This could be remedied through appropriate extraction and ventilation systems being in place but this would obvious impacts on both the internal character of the building and on its external appearance if it demands external vents. This aspect of the scheme does need further consideration.

3. Impact of extract and ventilation systems on the internal and external character of the building.

The inclusion of restaurant and spa uses will require the inclusion of appropriate extract and ventilation systems. These could have quite a profound effect on the internal and external quality of the building.

Despite requests a full M&E study has not been carried out to enable a proper understanding of what this would mean for the architectural and historic character of the building. Whilst some additional information has been made available more recently, this shows where the expected plant will be located but does not clarify what impact this will have on the internal or external qualities of the building.

Clearly there needs to be a balance between protecting the listed building and ensuring that uses can function within the building which will give it a sustainable future. It is likely that an appropriate solution can be found but it may be expensive if the impact on the listed building is to be minimised.

It is therefore recommended that some evidence is supplied prior to the decision being issued to show that the inclusion of the restaurant and spa uses can be dealt with in a way that protects the internal features of the building and does not harm the external appearance of the building.

4. The adaptation of the eastern facade to accommodate the bedroom link. All that requires listed building consent is the works to the eastern facade to accommodate the bedroom link to the proposed hotel on the harbour side. The bedroom link itself requires planning permission and it is through this process that its impact on the setting of listed building is evaluated. This facade is not original and dates from the 1980s when the proposal to use the Pavilion for retail purposes was implemented. The creation of an opening in the structure to accommodate the link in this more modern part of the building does not harm the integrity of the listed building.

5. The scale and quality of restoration work.

This broadly falls into two categories, the works required to achieve the buildings long term structural stability and the works required to restore its internal and external quality.

In respect of the former, the works that are required to prevent continued corrosion of the steel framework are detailed in a specialist structural survey and this needs to be translated into an agreed schedule of works.

In respect of the latter, detailed plans have been supplied as part of the listed building application which demonstrates a sympathetic reinstatement of lost and degraded features.

Again, this needs translating into a schedule of works so that delivery can be guaranteed. These matters can be dealt with by condition.

6. The impact of construction on the listed quayside.

Concerns have been expressed about the impact of construction on the possibly fragile listed quayside and the impact of the new harbour side walkway on the architectural and historic character of the quayside through the removal of the traditional bollards and extension of the timber walkway over the harbour edge thus obscuring the robust quay stones.

In terms of structural stability, this matter has been investigated by specialist engineers Ove Arup who were consultants when the car park was constructed in the 1980's. The construction of the existing MDL car park necessitated pile foundations and it is these which will largely be re-used in the proposed redevelopment.

Despite requests, a copy of this report has not been submitted but can be required by condition.

In terms of the loss of bollards and the impact on the listed quay side, an option has been put to the applicant which could help mitigate this harm.

This suggestion is fully detailed in the accompanying planning application and involves relocating the bollards to the southern quay of the harbour and introducing a more cohesive contemporary edge to the quayside alongside the development site and marrying up to the new bridge.

Whilst agreement has been reached on this detail is limited and further information is required.

S106/CIL -

All S106 matters are picked up in the accompanying planning application.

Conclusions

The use of the Pavilion for a front of house for the hotel is a good use for the building and is 'applauded' by Historic England. It delivers a sustainable use that will guarantee public access and secure its long term maintenance. There are some practical and technical matters that require resolution which can largely be dealt with by condition. The only matter of substance that should be dealt with in advance of a decision being issued is confirmation that the ventilation and extract

systems that the uses will demand can be sympathetically included.

Recommendation.

That listed building consent be granted subject to a) receipt of details which confirm that the extract and ventilation requirements of the pool, spa and restaurant uses within the building can be accommodated without harm to the internal character of the building or to its external appearance and that the impact of warm humid air on the stability of the plasterwork can be mitigated and b) to the following conditions.

* To secure an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works and reinstatement included with the application drawings. The agreed schedule of works to be implemented in full prior to any occupation of the proposed flats included in the sister application P/2015/0961.

* Submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair, reinstatement of key features. This document to include large scale details as appropriate of all works of repair and reinstatement of external and internal features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme.

* Details of all partitions showing final position and relationship to the internal structure of the building and showing inclusion of glazed panels as appropriate to maintain the open character of the main auditorium.

* Submission of a structural survey to confirm that the long term stability of the quay side can be assured.

* Submission of a full photographic record of all key features along with any exposed during conversion.

* Full details of the proposed relocation of the traditional bollards along the quayside.

Condition(s)/Reason(s)

01. Prior to commencement of any development on the site, full details of a schedule of works and materials to the Pavilion building shall be submitted to and approved in writing by the Local Planning Authority. The schedule of works and materials shall be based on an updated conditions survey of the building carried out by a competent and suitably qualified specialist surveyor and shall confirm

the detailed condition of the building and the works necessary to deliver a minimum 30 year future for the listed Pavilion building. Any such survey shall reflect the advice contained in the report of Alan Baxter Associates, plan references 'P20150961-31 Alan Baxter Part 1', P20150961-32 Alan Baxter Part 2' and 'Alan Baxter Part 3' received 30th May 2017 regarding the scale and nature of the works necessary to remedy the particular defects of the listed Pavilion building. The schedule of works shall reflect plan reference 'P20150961 Pavilion Repairs July 2013' received 30.05.2017 and include a delivery of the works as shown on plan references '3152 PL (32)06 04', '3152 PL(32)07 03', '3152 PL(32)08 03' and 3152 PL(32)09 04 received 5th May 2017. It shall also include the implementation of the range of reinstatement works to the internal and external fabric of the building as detailed in the approved plan references:

- o Plan reference 'P20150961-8 SoW to Windows' received 30th September 2015
- o Plan reference 'P20150961-7 SoW Doors' received 30th September 2015
- o Plan reference 'P20150961-4 Bandstands Copper Domes' received 30th September 2015
- o Plan reference 'P20150961-6 UG Decorative Ceilings' received 30th September 2015
- o Plan reference 'P20150961-5 GF Decorative Ceilings' received 30th September 2015

All the works comprised within the schedule of works shall be completed in full in strict accordance with the approved details prior to the occupation of any of the residential units approved under planning permission P/2015/0961 unless alternative provision for delivery is otherwise agreed as part of the wider phasing strategy to be secured through the discharge of condition No 3. Reason: To ensure that this listed building is appropriately restored in line with policy HE1 of the Torbay Local Plan 2012-2030. These details are required prior to commencement as the development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. Confirmation of these restoration works is therefore required to be submitted to and approved in writing by the Local Planning Authority to ensure certainty of the delivery of the works before any works are commenced.

02. Prior to the commencement of the development, a detailed phasing agreement for the delivery of the overall scheme permitted through this listed building consent and planning permission P/2015/0961 shall be submitted to and approved in writing with the Local Planning Authority. This shall reflect the delivery of the fully repaired listed Pavilion building prior to any occupation of the development and the full delivery of the hotel shell and core prior to occupation of the 20th residential unit. The detailed phasing agreement shall also include a timetable for the delivery of the public realm enhancements as included in plan reference '3152-1-17-SK2 R3 Masterplan' received 5th May 2017 and shaded blue on plan reference '3152-1-17-SK3 1 Public Realm' received 30th May 2017 and include the timetable for the making good of the quay walls and relocation of the traditional bollards to South Quay or an alternative scheme for their relocation submitted pursuant to condition 34. The works to the listed building shall proceed in strict accordance with the approved details. Reason: The wider Pavilion development is only acceptable as the scale of public benefit outweighs

the harm to the historic environment. A key benefit is the renovation of the Pavilion and regeneration of the harbour side through delivery of improvements to the public realm. It is important therefore that they are delivered in their entirety and in a timely fashion. This is necessary to meet the tests in paragraph 134 of the NPPF and to comply with policies SS10, HE1 DE1 and DE4 of the Torbay Local Plan 2012-2030 that would be otherwise compromised. These details are required prior to commencement as the development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. Confirmation of delivery of these public benefits is therefore required to be submitted to and approved in writing by the Local Planning Authority to ensure certainty of the delivery of the works before any works are commenced.

03. Prior to any works being carried out in relation to the repair of the listed Pavilion building, a detailed Conservation Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. A written scheme of investigation ('WSI') is to be appended to the CMP. The WSI will govern the recording of the Pavilion before and during development, and conform to the Chartered Institute for Archaeologists' published 'Standard and Guidance for the Archaeological Investigation and Recording of Standing Buildings or Structures' (December 2014). The CMP shall be based on the advice contained in the report of Alan Baxter Associates 2013, plan references 'P20150961-31 Alan Baxter Part 1', P20150961-32 Alan Baxter Part 2' and 'Alan Baxter Part 3' received 30th May 2017 submitted to inform the nature of the repairs needed to the fabric of the listed building and on the supporting plans which detail the scope and range of works to be carried out to the internal and external fabric of the listed building to ensure its appropriate restoration as detailed in condition 1. The CMP shall provide relevant detail with regard to internal and external works of repair, reinstatement and new works as set out in the schedule of works and materials. Detailed drawings at a scale of 1:5, 1:10, 1:20; or as appropriate shall be included. The CMP shall also include a timetable for delivery for these works and include details of a 30 year maintenance programme. The works to the Listed Building shall proceed in strict accordance with the approved details. Reason: The development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. A key benefit is the repair and refurbishment of this key listed building and securing its robust future use. It is important therefore that appropriate repairs are secured and that refurbishment of the building is carried out in a sensitive manner. This is necessary to meet the tests in paragraph 134 of the NPPF and to comply with policies SS10, HE1 DE1 and DE4 of the Torbay Local Plan 2012-2030 that would be otherwise compromised. These details are required prior to commencement as the development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. Confirmation of these restoration works and their delivery is therefore required to be submitted to and approved in writing by the Local Planning Authority to ensure certainty of the delivery of the works before any works are commenced.

04. Full details of all partitions showing their final position and relationship to the internal structure of the building and showing inclusion of glazed panels as appropriate to maintain the open character of the main auditorium of the listed Pavilion building shall be submitted to and approved in writing with the Local Planning Authority prior to any works taking place in connection with the conversion of the internal space within the listed Pavilion building. The works shall proceed in accordance with the approved details and be carried out in full prior to the occupation of the listed Pavilion building. Reason: To ensure that the internal space of the building can be appreciated in line with Historic England's advice and to accord with policy HE1 of the Torbay Local Plan 2012-2030.

05. The Pavilion shall not be bought into use as a front of house for the hotel until a report following post-investigation assessment and subsequent analysis, has been prepared in accordance with the WSI and submitted to and approved in writing by the Local Planning Authority. Reason: To ensure that there is a full record of existing features of the building along with any exposed during works in the interests of maintaining a record of this listed building in line with policy HE1 of the Adopted Local Plan 2012-2030.

06. Prior to the use of the Pavilion for restaurant, bars or spa purposes full details of the proposed plant and extract systems (to include drainage runs and ducting) required for the operation of that use shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of its external appearance and shall be based on plan references '3152(20)PV1 04(GF&LGF plant location)' received 29th May 2017, '3152(20)PV2 03 (FF&SF Plant)' received 24th May 2017, '3152(42)PV1 03 (Plant location)' received 24th May 2017 and '3152-PLANT B (Plant Strategy)' received 24th May 2017. The plant and extract systems shall proceed in accordance with the approved details and be implemented prior to the use of the Pavilion for restaurant, bars or spa purposes. Reason: To ensure that any necessary plant or extract system is visually acceptable in the context of its position in relation to listed buildings and within the Conservation Area and that it effectively deals with emissions from the site without affecting the integrity of the listed building in accordance with policies SS10, HE1 and DE1 of the Torbay Local Plan 2012-2030.

07. The Britannia statue which was removed from the roof of Pavilion due to concerns about its stability shall be reinstated on completion of the roof repairs and prior to any occupation of the residential units approved under planning permission P/2015/0961. Reason: This is a fixture of the listed building and its removal is not acceptable except for the duration of the roofing works. Its reinstatement is required on completion of the roof repairs in order to comply with policy HE1 of the Torbay Local Plan 2012-2030.

Relevant Policies

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27th February 2017		
Conditional planning permission granted subject to:		
(i) clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:		Confirmed as acceptable by DMC on 8 May 2017
	a) Opportunities for mitigating the impact of the lift shaft;	Confirmed as acceptable by DMC on 8 May 2017
	b) Confirmation that the balconies will be constructed as a continuous curve;	Confirmed as acceptable by DMC on 8 May 2017
	c) Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail;	Confirmed as acceptable by DMC on 8 May 2017
	d) Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building; and	Delegated to Executive Head – Business Services - see Minute - 8 th May 2017
	e) External plant in relation to listed building;	Delegated to Executive Head – Business Services ? see Minute - 8 th May 2017
(ii) the conclusion of a Section 106 Agreement at the applicants expense to secure the following matters;	<i>Technically, terms of s.106 not delegated to officers</i>	<i>Michelmores have been employed by the LPA to negotiate and draft this s.106. This note indicates where in the draft agreement the relevant requirement can be found. It makes no representations as to the appropriateness or</i>

		<i>otherwise of the contents of the draft agreement.</i>
	<p>a) to secure deferred contributions towards future public realm enhancements as defined in the body of the report namely</p> <p>i. re-surfacing of Fish Quay, ii. an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal.</p> <p>The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA.</p> <p>The contribution to be assessed either in relation to uplift in projected sales values of the residential units (based on Appendix B of the IVA dated 31st August 2016, specifically the Savills estimates of values); or such other method agreed with the applicant (e.g. open book accounting of the entire scheme);</p>	<p>Schedule 4</p> <p>Para 12, Schedule 4 <i>(n.b. refers to profits over those predicted in IVA, not income generated, but other methods of calculating uplift appear to be possible - see next paragraph)</i></p>
	<p>b) the maximum deferred contribution will <i>(be)</i> equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm;</p>	<p>Stated in definitions to be £981,000 – not sure how this was calculated</p>
	<p>c) to ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed);</p>	<p>Para 3.8. Schedule 1</p>

	d) a commitment, in the operation of the hotel, to <u>procurement of local goods and services</u> as described in the HJA report;	Para 3.9. Schedule 1
	e) a commitment to use of <u>local labour</u> both during the construction of the development and in the ongoing operation of the hotel;	Para 3, Schedule 1
	f) to secure a <u>financial contribution of £30,000</u> towards enhancements to Princess Gardens;	Para 2, Schedule 1
	g) <u>to secure the terms of the car parking strategy, public access to Cary Green</u> and agreement for <u>public use of eastern part Cary Green</u> for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed;	Para 4, Schedule 1
	h) to secure an <u>annual monitoring contribution</u> towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not ‘bank parked’ as explained in the body of the report;	Para 4.2, Schedule 1
	i)to secure modelling <u>of the mini roundabout</u> and <u>implementation of any highway works</u> deemed necessary via a S278 Notice prior to any occupation j)Performance bond (if required);	Para 5, Schedule 1 <i>It appears from the committee report that this relates to a bond to secure delivery of the renovation works to the Pavilion.</i>

		<i>As the conditions (condition 03. of the version dated 30.05.17) include a prohibition on occupation of any part of the development until the repairs have been completed, the bond was considered to be unnecessary.</i>
(iii) the conditions set out in the submitted report plus additional conditions relating to monitoring of key* walls and dock office. <i>*this should read 'quay'</i>		No delegated authority for any additional conditions
8th May 2017		
Conditional planning permission granted subject to:		
Receipt of the following information	<i>approval of which is to be delegated to the Executive Head – Business Services; (??)</i>	
	i. strategy for relocating the traditional railings and form and extent of new railing detail;	Don't know if any of these have been done yet – if KM is to make the decision, an officer report should be prepared which fully briefs him and makes a recommendation. Decision-maker needs to confirm (in writing) that report has been read and understood. Any decision not made in accordance with the recommendation will need to be justified in writing.
	ii. strategy for external and internal plant in relation to the listed building;	
	iii. further details relating to the extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services;	
Completion of a section 106 agreement to include matters set out in the Minutes of the		See above

Development Management committee held on 27 February 2017		
Final drafting of conditions delegated to the Executive Head of Business Services		

Application Number

P/2015/0961

Site Address

Torquay Pavilion And Marina Car Park And
Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Mrs Helen Addison

Ward

Tormohun

Executive Summary/Key Outcomes

1. Members will be aware that the resolution of the Development Management Committee of 27th February 2017, to grant planning permission for the development of Torquay Pavilion and Marina car Park, subject to the receipt of further information, the completion of a s.106 agreement and various planning conditions, is currently the subject of an application for Judicial Review. The Council is contesting the application, and is awaiting a decision from the High Court as to whether the application will be given permission to proceed.
2. Whilst the legal advice received is that the application that has been made is not well-founded, further consideration has been given to the overall decision-making process, and this has identified that the original officer report ('the Report') was not as clear as it might have been in certain respects. The legal advice is that it is prudent to address these matters at this stage, whilst the planning application remains outstanding, in order to ensure that any planning permission, if and when issued, is robust and not vulnerable to challenge on the basis of a technicality.
3. This report will clarify, for the avoidance of doubt, the policy assessment of the proposals against relevant provisions of the Local Plan and all other material considerations (including the Public Sector Equality Duty). It will also provide members with an update on the progress of the applications, particularly regarding matters where "clarification" was sought in the original resolution.
4. The policy assessment concludes that the proposals are in accordance with the Local Plan and that the application should be approved subject to a s106 agreement, receipt of additional information, and appropriate conditions.

Recommendation

- A. That the following additional information, submitted by the applicant as part of the application since 27 February 2017, is confirmed as being acceptable
 - a. clarification of the impact of 'shadowing' on the amenity of public space
 - b. opportunities for mitigating the impact of the lift shaft
 - c. confirmation that the balconies will be constructed as a continuous curve
 - d. detail in relation to the harbour walkway
- B. That conditional planning permission is granted for the proposal subject to
 - a. receipt of the following additional information
 - i. strategy for relocating the traditional railings and form and extent of new railing detail; and
 - ii. strategy for external and internal plant in relation to the listed building
 - iii. further details relating to the extended resurfacing between Offshore and

- the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services
- b. completion of a S106 agreement to include the matters listed in the Minutes to the Committee meeting of 27th February 2017
 - c. final drafting of conditions to be delegated to the Executive Head of Business Services

Assessment of Proposals against provisions of the Local Plan

Guidance

5. All members of the Development Management Committee have had Spatial Planning, Member Induction training and are aware that planning decisions must be made in accordance with the up-to-date development plan (the Torbay Local Plan 2012-2030), unless material planning considerations indicate otherwise.
6. If a planning application accords with the provisions of the development plan, planning permission should be granted without delay.
7. It is considered that the officer report dealt with all issues comprehensively, however it did not explicitly reach a conclusion on compliance with the Local Plan before going on to consider whether material considerations indicate a different outcome to that indicated by the Local Plan. The Council has received legal advice which recommends that the committee's decision will be strengthened if this omission is addressed before any planning permission is granted. This advice does not apply to consideration of the application for Listed Building consent because there is no statutory requirement to have regard to the provisions of the development plan when determining such applications.

Description of Development

8. The proposals seek consent for the construction of a 60-bed hotel, which includes restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms, together with 43 residential apartments and ground floor restaurant and retail uses adjacent to the harbour . Consent is also sought for a link between Pavilion and new hotel, a new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel), a Marina office, berth-holder facilities, a Dockmaster's office and associated landscaping.

Assessment

9. With appropriate planning conditions and subject to additional control through a s.106 planning obligation, both as set out in the Report, the proposals will result in
 - a. large-scale urban regeneration which supports Torquay Town Centre and Harbourside by the provision of 43 good-quality town centre homes, a high-quality hotel and additional restaurant/retail facilities in Core Tourism Investment Area.
 - b. the renovation and long-term maintenance of the Pavilion through its integration into the hotel complex
 - c. improvement of the public realm in a key Harbourside location and the provision of public changing facilities for adults with disabilities.
 - d. the creation of up to 179 jobs in the hotel/restaurants and, through the use of a s.106 planning obligation, the use of local labour, training for local people and use of local produce.

10. The proposals accord with policies SS11 (Sustainable communities), TO1 (Tourism events and culture), SDT1 (Torquay Strategic Policy Area), SDT2 (Torquay Town Centre and Harbour), SS1 (Growth strategy), HE1 (insofar as it supports proposals which will help to conserve the historic fabric and character of a Listed building), H1 (Applications for new homes), DE1 (Design), DE2 (Building for Life), DE3 (Development Amenity), ER1 (Flood Risk), ER3 (Contamination), ER4 (Ground Stability), TC5 (Evening and night-time economy), SS14 (Low carbon development and adaptation to climate change), TA1 (Transport and Accessibility), TA2 (Development Access), TA3 (Parking requirements).
11. The Environment Agency and the Council's drainage engineer are satisfied with the Flood Risk Assessment; there are no land contamination or ground stability issues and the minimisation of carbon emissions will be secured by condition.
12. Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitats.
13. Although there are no specified minimum (or maximum) parking thresholds for town-centre uses in the Local Plan, the amount of car parking provided on site is considered to be the minimum necessary for successful delivery of the various proposed uses of the scheme and parking that is not related to the marina, hotel or apartments will not be provided.
14. The Council's Strategic Transport/highways teams consider that the proposals are acceptable subject to modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 agreement.
15. The Local Plan contains a number of additional policies, not specifically mentioned in the Report, which reinforce the aim of the Local Plan to support sustainable development. These include: SS3 Presumption in favour of Sustainable Development, SS4 The Economy and Employment, SS5 Employment Space, SS10 Conservation and the Historic Environment, SS12 New Housing, SS13 Five year housing land supply. The site is within Torquay Town Centre and Policy TC1 promotes the regeneration of key sites as expanded in Policies SDT1 and 2. Several of the proposed uses (hotel, leisure, retail and food and drink) are main town centre uses, which are supported by Policy TC1, TC2 and TC3 of the Local Plan.
16. The Torquay Town Centre Masterplan identifies the whole application site as a key regeneration site.
17. **Design and height/mass of the building** – the Report concludes that the building is 'well designed and has inherent merit'. Subject to ensuring that the detailed appearance and use of good quality robust materials by the imposition of planning conditions, on balance, the proposals accord with policy DE1 (Design). As the building will deliver significant wider public benefits, and alternative ways of delivering those benefits have been considered and discounted, the proposals are accordance with policy DE4 (Building Heights) and HE Advice Note 4 'Tall Buildings'.

18. **Affordable Housing** - Policy H2 (Affordable Housing) sets out a requirement to provide 20% affordable housing. The policy states that developers would be required to provide an independent assessment of viability in order to be permitted to reduce significantly the provision of affordable housing. Policy H2 further states that in order to secure additional investment in disadvantaged areas, the Council may agree to a reduction or zero provision of affordable housing. Development of such sites should provide significant benefits in terms of creating sustainable, balanced communities. The application was supported by an IVA and is located within a Community Investment Area (Policy SS11 area). On this basis, despite not providing affordable housing, the proposals accord with policy H2
19. The Report confirms that
“The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden”
20. **Effect on Heritage Assets** - The Report assesses in detail the effect of the proposed building, and the loss of Cary Green (as part of the setting of adjacent listed buildings) on various Heritage Assets and concludes that the development is harmful to the setting and significance of key listed buildings (Members should note that, contrary to heading 11 on p. 51 of the report, the quay walls adjacent to the site are not listed), to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. The Report concludes that
- the extent of the harm caused by the building is ‘significant’ but ‘less than substantial’
 - the proposed alterations to Cary Green are acceptable in heritage terms
21. Sections 66 & 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the ‘Listed Buildings Act’) imposes a duty on Local Planning Authorities when determining planning applications to pay special attention to the desirability of preserving Listed Buildings, their setting or any features of special architectural or historic interest (s.66) and preserving or enhancing the character or appearance of the Conservation Area (s.72).
22. Paragraph 134 of the NPPF provides that ‘where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use’.
23. Policy SS10 (Conservation and the historic environment) reflects the requirements of sections 66 & 72 of the Listed buildings Act but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment.
24. SS10 states that proposals may affect heritage assets will be assessed on eight criteria. Criterion 7 is particularly relevant. It includes a test that allows any harm caused to

heritage assets to be balanced against (and potentially outweighed by) public benefits. In addition, para 4.4.30 of the supporting text to explain Policy SS10 suggests that it contains “sufficient flexibility” to ensure that any heritage harm is weighed against wider benefits.

25. The report acknowledges that the harm to heritage assets is ‘significant’ or ‘considerable’ but goes on to state that
- a. Subject to conditions, the design of the building and improvements to the public realm will lift the quality of spaces around it and achieve ‘place making’ regeneration to offset some of the harm to the historic environment
 - b. The public benefits of the scheme (discussed in full in section 4, p37 of the Report) are :
 - i. The restoration of the Pavilion – the cost of repairing the building to provide 25 years life has been estimated at £2.76m
 - ii. Public realm improvements round the Pavilion (although in part subject to a deferred contribution) as per p10 of the Committee Report
 - iii. Delivery of a 4* hotel and the contribution this will make to maintaining Torbay’s position as a premier resort. The Council’s Tourism Strategy “Turning the Tide” identifies a shortage of higher ranking hotels, and a need for modern purpose built accommodation. Tourism accounts for about 22% of Torbay’s employment and the GVA generated by the development is estimated to be about 1% of the value of the tourism sector.
 - iv. Economic benefits estimated at being £32m of construction and 20 TFE construction jobs; plus 98 FTE jobs in the hotel and 81 jobs from the operation of bars and restaurants. The value to the local economy of this is estimated to be £4.27m per year. Up to an additional 136 jobs and £2.9m per year of economic benefit are assessed to arise from “net additional local impacts” arising from local sourcing and multiplier benefits.
 - v. Broader (and difficult to quantify) catalyst for urban renewal and regeneration as sought by the Local plan (SS1 etc) and the Corporate Plan. The development of nearby Palm Court has significantly regenerated this part of Torquay’s waterfront.
 - vi. The provision of 43 dwellings.
 - vii. Torbay is one of the most deprived areas in the South West. The indices of Deprivation 2015 indicate that its rank of average indices of multiple deprivation puts it at 46th out of 326 Local authority areas in England. By concentration of deprivation and employment deprivation, Torbay has even more severe indicators at 37 most deprived by concentration, 32 by average income and 14th by employment. Torquay Harbour (and most of Torquay town centre) falls within the top 10% most deprived lower super output areas. Deprivation has become steadily more pronounced over successive indices. The IMD picture is reflected in employment, income, GVA and benefit statistics. This is a material consideration in determining the weight that should be given to economic regeneration benefits.
26. The Report concludes, (in section 7, page 43) that
- “given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of

the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.”

The officer recommendation is therefore that the proposals accord with Local Plan policy SS10 (Conservation and the Historic Environment).

27. Policy HE1 (Listed buildings) accords with the LPA’s statutory duty as imposed by the Listed Buildings Act. It requires development proposals to have ‘special regard’ to the desirability of preserving listed buildings or their settings states but also states that suitable uses for listed buildings will be supported where this would help to conserve their historic fabric and character.
28. The report acknowledges that there will be some harm to the setting of the Grade I Listed St Johns Church and the Grade II listed Mallocks clock tower. However it concludes that the benefit of saving the Pavilion outweighs the harm the development will cause. The proposals therefore accord with Local Plan policy HE1 (Listed Buildings).

Material Considerations

29. Government Guidance – The National Planning Policy Framework (NPPF) contains the government’s planning policy. The presumption in favour of sustainable development (para 14) does not apply to designated heritage assets (which include conservation areas and listed buildings). However the Ministerial Foreword indicates that development means growth, and that the planning system should enable positive growth. Paragraphs 6-10 indicate that the planning system should play an active role in promoting sustainable development.
30. Paragraph 17 sets out Core Planning Principles. Bullet 3 indicates that every effort should be made to meet the needs of an area. Bullet 4 seeks high quality design and good standards of amenity.
31. Specific policy on conserving and enhancing the historic environment is set out in Chapter 12. Paragraph 131 requires planning authorities, when determining planning applications, to take account of:
- i. The desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation.
 - ii. Positive contributions that conservation of heritage assets can make to sustainable communities including their economic viability.
 - iii. The desirability of new development making a positive contribution to local character and distinctiveness.
32. Paragraph 133 indicates that proposals that lead to substantial harm to, or total loss of, a designated heritage asset, should be refused *unless the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss*; or all of four criteria apply. In summary these criteria are:
- There are no reasonable uses of the site due to the nature of the heritage asset.
 - No viable use of the heritage asset can be found in the medium term.
 - Conservation is demonstrably not possible.
 - The harm or loss is outweighed by the benefit of bringing the site back into use.

33. Paragraph 134 of the NPPF indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm must be weighed against the public benefits of the proposal, including securing its optimum viable use.
34. The Glossary of the NPPF defines heritage assets and significance. Significance means value for this and future generations, and includes a number of factors including setting.
35. The NPPF is elaborated on by the online (National) Planning Practice Guidance (PPG). Paragraph 18a-017-20140306 defines substantial harm in terms of the impact on the significance on the heritage asset. Assessing whether a proposal causes substantial harm is a matter for the judgement of the decision taker, but it is noted that “in general terms substantial harm is a high test”.
36. The PPG defines public benefits in relation to heritage assets at 18a-020-20140306. These include (but are not limited to):
 - Sustaining or enhancing the significance of heritage assets
 - Reducing or removing risks to a heritage asset
 - Securing optimum viable use of a heritage asset in support of its long term conservation.

Emerging Torquay Neighbourhood Plan

37. The Torquay Neighbourhood Forum consulted on a Regulation 14 Draft version of the Torquay Neighbourhood Plan between 22 August and 3 October 2016. This document identifies that the Pavilion and Torquay Marina Car Park site has potential for development. The plan states that building height should be carefully considered so that the impact is not detrimental. In addition a number of ideas/alternative proposals are suggested as possible options for development. The draft Torquay Neighbourhood Plan specifically allocates the area known as Cary Green as a Local Green Space, which has a meaning in the NPPF (para. 77) of ruling out development within this area other than in very special circumstances.
38. (National) Planning Practice Guidance states that an emerging neighbourhood plan may be a material consideration in determining planning applications. However, Paragraph 216 of the NPPF says that decision-takers may give weight to emerging neighbourhood plans from the **date of publication**, and only then according to how advanced the plan preparation is, the extent to which there are unresolved objections and the degree of consistency with the NPPF. As the Torquay Neighbourhood Plan has only reached Regulation 14 Pre-submission Consultation, only limited weight can be afforded to the Plan as it may be subject to change following consultation and prior to submission to the local authority. The plan has not yet been checked for legal compliance (carried out at Submission) and has not yet been tested against the Basic Conditions (carried out at Examination).

Public Sector Equality Duty

39. 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.

40. In terms of direct impacts the proposal is most likely to affect people with disabilities; although there are likely to be age related issues pertaining to the economic benefits arising from regeneration.
41. The proposal provides through S106 requirements public realm enhancements including extension and improvement of paving.
42. Mencap requested that changing facilities be provided in the building for people with disabilities, which will be provided to “Changing Places” standard.
43. The building will need to comply with accessibility requirements under building regulations; however the proposed 43 dwellings are below the 50+ dwelling threshold in Policy H6 of the Local Plan for 5% to be built to Building Regulations Standard M4(2) accessible and adaptable standard).

Conclusion

44. For the reasons stated above your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

Other issues

Receipt of further information

The following additional information has now been submitted;

Opportunities for mitigating the impact of the lift shafts.

45. There are two lift shafts that will be visible on the roof of the development. One will be on top of the tower and the other on top of the five storey element of the building. Both over runs will project 1.4 metres above the roof. The lift overrun on the tower was concealed from view within the previous design but was subsequently exposed due to Historic England’s views on the assertiveness of the roof profile which, in their view, increased the impact on the setting of the Pavilion when viewed from nearby to the west. Historic England felt the most recent revisions made the proposals less assertive. However the changes to the design of the roof on the tower increases the prominence of the lift shafts.
46. There isn’t a straightforward solution to this issue and the applicant has explained that it is difficult to devise a strategy that will hide the appearance of the lift shafts. This is explained in more detail below. Due to the topography of the surrounding area the lift over runs will be visible from elevated locations that overlook the site. The applicant has submitted an assessment of the views of the lift shafts from a number of locations. The most notable locations that the lift shafts will be visible from are the Church of St John the Apostle and the Terrace car park.
47. The applicant advises that they have considered the following options for mitigation;
 - i. Revert to previous roof profile –this would not be acceptable due to previous HE concerns
 - ii. Raise main roof to reduce relative height of overrun –this would not be acceptable as height is not needed internally and HE would be likely to consider this a negative step in heritage terms

- iii. Revise layouts to move lifts further inboard – the applicant advises this would require fundamental replanning which may alter external facade and would increase circulation and reduce usable floor area on lower floors
- iv. Change materials / appearance of overrun – possible but will have limited impact as silhouette will remain the same
- v. Incorporate platform lifts in lieu of conventional lifts to remove overrun completely – not practical as excessive travel distance and travel times would be unacceptable
- vi. Change top two floors to duplexes –The applicant advises that visually there would be no net benefit as the removal of the overruns would be offset by introduction of external privacy screens to prevent overlooking between duplexes and their neighbours' balconies. A principle of the development is for the top floors to be as slender and uncluttered as possible and this would be a negative step in this regard. Also would almost certainly cost more to build for less useable floor area.

48. The lift overrun on the tower would have a greater impact on the appearance and character of the Conservation Area than the overrun on the lower level because it would project above the height of the building and would to some extent compromise the distinctive design and appearance of the tower. The visual assessment shows that it would be less apparent when viewed from the north and west as it would be seen against a backdrop of development on Parkhill Road and above. It would have a greater visual impact when viewed against an open background, which would occur in views from the north of the site, particularly St Johns Church and the Terrace car park.

49. Considering the applicant's comments, the submitted evidence that the lift shaft on the tower would not be visible from a number of locations around the site and the context of the visual impact of the development as a whole it is considered that the proposed lift shaft overruns would be acceptable.

Clarification of 'shadowing' on the amenity of public spaces

50. A shadow study with a summary of the effects of shading from the proposed development has been submitted. The images show minimal overshadowing of public external space at mid – summer with the lower block shading only the car park and the areas immediately in front of its own A3 units. The shadow of the tower element will pass over the car park during morning and shade the proposed development for the majority of the day without affecting other properties. By the evening the shadow of the building is shown to pass across parts of the harbour, with only the top storeys shading a small section of Victoria Parade after 7pm, which is approximately 1 hour before the sun retreats behind Waldon Hill.

51. The impact on Victoria Parade would be limited, with the shadow of the top few storeys shading only a small proportion of the street from April to September in the last hour before the sun retreats behind Waldon Hill. For most of autumn and all of winter the shadow of the building is shown not to reach as far east as Victoria Parade at any point of the day.

52. Shading of the area between the proposed new hotel wing and Vaughan Parade is minimal at the height of summer, with the new building shading mostly the area immediately in front of its ground floor restaurant unit, peaking at around 2pm. In spring and autumn (March, April, September and October) the shadow will extend further across the street with the area in front of Offshore also shaded during the middle of the day.

Confirmation that the balconies will be constructed as a continuous curve and that the aluminium framework can also deliver the quality of detail.

53. The sectional perspective of the prow of the Fish Quay building has been updated to show the curvature of the balcony edge and balustrading. Images have been submitted of the type of aluminium cladding which is proposed for these details. It would have curved rather than faceted profiles, recessed joints, concealed fixings and folded rather than jointed corners / edges. It would be appropriate to impose a condition requiring large scale details of the proposed balconies and a specification of materials in order to ensure this key element of the external appearance of the building is of sufficiently high quality.

Additional detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.

54. An indicative plan showing the proposed relocation of the existing bollards and a specification of works to make good the quay wall is awaited. Similarly details of the new enclosure/railings that will extend up to the fish quay are also awaited. It would be appropriate to condition the strategy for relocation of the bollards to be agreed by the LPA prior to their removal as there may be implications for the operation of the harbour or health and safety issues which will need to be further considered by the Council including the Harbour Master.

55. Further clarification of how the habourside elevation of the walkway will be addressed has been submitted. This shows that the walkway will be cantilevered above the harbour walls with a mesh inserted in the gap between the wall and the walkway to prevent nesting by birds and accumulation of rubbish. A chamfered concrete capping will be placed on top of the harbour wall to match similar capping around other sections of the harbour walls. The detail is considered to be acceptable taking into account the fact that the harbour wall is not listed in this area.

56. A plan showing how the new walkway adjacent to the harbour will work in terms of public and disabled access has been submitted. This shows that level access can be achieved along the new walkway adjacent to the inner harbour.

Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.

57. A revised plan has been received which shows natural stone paving extended to the site boundary opposite Offshore. In addition a previously indicated vehicular access to the southern side of the Pavilion adjacent to the marina has been deleted from the plan.

Clarification of the impact of external plant in relation to the listed building.

58. Revised plans have been submitted that show the existing plant to be removed from the outside of the Pavilion and the locations of new external plant. The majority of plant will be screened by existing balustrade walls apart from an area of plant on the eastern elevation, which is shown as being behind a new screen. A draft strategy clarifying how this will be addressed will be needed as this has the potential to be prominent in both the north and east elevations and further clarity to demonstrate that this can be achieved without resulting in harm to the architectural and historic character of the Pavilion is needed.

59. In respect of provision of internal plant a draft strategy has been requested. The needs to include method statements for removing redundant plant and installing new plant, confirmation that a conservation specialist will collaborate on the strategy, the method of monitoring the operation of the plant to ensure levels of humidity are not excessive.

Update on progress of S106 agreement

60. The S106 agreement is still being agreed between the applicant and the Council. Negotiations are ongoing.

Conclusions

61. For the reasons given in the Report and in this supplemental report your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

62. The additional information submitted since 27th February is considered to be acceptable however, further information is still required. Approval of these minor outstanding matters can be delegated to officers.

63. As a result the recommendation remains that the proposals are approved subject to completion of s.106 agreement, conditions and the receipt of satisfactory additional information all as discussed earlier in this report.

Application Number

P/2015/0961

Site Address

Torquay Pavilion And Marina Car
Park And Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Alexis Moran

Ward

Tormohun

Recommendation

1. Approval of details submitted in accordance with the resolutions of Development Management Committee of 08.05.2017.

Site Details

2. The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.
3. It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.
4. The Pavilion is Grade II listed, 3-15 Vaughan Parade, the adjacent terrace is Grade II listed as is the Cary Estate Office on Palk Street and 1 Palk Street which overlook Cary Green. The quay walls and the Fish Quay which is to the immediate south of the application site are also Grade II listed.
5. The Grade 1 listed St Johns Church sits on the nearby hillside which forms backdrop to the harbour and overlooks the site. Part of the application site lies within Princess Gardens, a Grade II entry in the Register of Parks and Gardens. The registered Garden extends to the west of the application site and includes two further (Grade II) listed structures, the Fountain and the War Memorial.

6. Currently the MDL car park site comprises a semi basement and top deck car park providing 235 car parking spaces for the associated Marina. The lower level is normally used exclusively by MDL berthholders with the upper deck often used for public pay and display purposes.
7. The car park forms the western edge of the harbour walkway and includes at the northern end, retail and catering outlets with associated seating looking out over the inner harbour. It otherwise presents an inactive frontage to the harbour.
8. The Pavilion, constructed as a theatre in 1911, has been vacant for several years having previously been in use as a small specialised retail outlet and is now in a very poor structural condition. This largely arises due to corrosion of the innovative steel frame used in its construction and is a common problem in other similar buildings of this era.
9. Cary Green, a public open space, was laid out in its current form following the construction of the Fleet Walk Shopping Centre in the 1980's comprising a mix of hard and soft landscaping. It is overlooked on three sides by listed buildings, The Pavilion to the south, the Cary Estate Office and 1 Palk Street to the north and 3-15 Vaughn Parade to the east. To the north west of the open space lies the Ziggurat, a rather unappealing means of achieving pedestrian and disabled access from Fleet Walk Car Park to the sea front which dominates this space. There is a detached single storey building with a pitched roof on the south side of Cary Green in use as a taxi office.
10. The site is located within the defined town centre and adjacent to the harbour with high levels of pedestrian and vehicular traffic. It is very prominent within the townscape both in short and long distance views.

Description

11. This report relates to Major Planning Application reference P/2015/0961/MPA and Listed Building Consent reference P/2015/0962/LB. It is an update to the resolutions of the Development Management Committee of 08.05.2017. The descriptions of these proposals are provided below;
12. P/2015/0961/MPA - Torquay Pavilion And Marina Car Park And Office And Adjoining Land, Vaughan Parade, Torquay –
 - Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with

ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016)

and;

13. P/2015/0962/LB - Torquay Pavilion, Marina Car Park and Office and adjoining land, Vaughan Parade, Torquay -
 - Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016)

14. The committee resolution for planning application P/2015/0961/MPA was that conditional planning permission be granted subject to:
 - a. receipt of the following additional information
 - i. strategy for relocating the traditional railings and form and extent of new railing detail;
 - ii. strategy for external and internal plant in relation to the listed building;
 - iii. further details relating to the extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services;
 - b. completion of a Section 106 Agreement to include the matters set out in the Minutes of the Development Management Committee held on 27.02.2017; and
 - c. final drafting of conditions delegated to the Executive Head of Business Services.

15. With regards to the Listed Building Consent P/2015/0962/LB it was resolved that the Executive Head for Business Services be authorised to agree the extraction and ventilation details and the final drafting of conditions.

Planning Policy

16. The key policies to consider in relation to the submitted details are Policies SS10 (Conservation and the historic environment), Policy HE1 (Listed Buildings) and Policy DE1 (Design) of the Torbay Local Plan 2012-2030.
17. Policy SS10 of the Torbay Local Plan states that proposals which may affect heritage assets will be assessed on whether they encourage appropriate adaptations and new uses and whether the impact is necessary to deliver demonstrable public benefits. The policy also states that where new development should be assessed on whether it contributes to the local character of the area particularly through high quality of design. This policy is in compliance with paragraphs 131-134 of the NPPF.
18. Policy HE1 requires development proposals to have 'special regard' to the desirability preserving listed buildings or their settings. It also confirms that new development should respect the significance, scale, form, orientation and architectural detailing of any listed building it affects.
19. Policy DE1 of the Torbay Local Plan should be well-designed, respecting and enhancing Torbay's special qualities including waterfront areas and the character of the built environment.

Torquay Neighbourhood Plan

20. The emerging Torquay Neighbourhood Plan ('TNP') covers the area within which the application site is situated. Since the Development Management Committee of 08.05.2017 the TNP proposals have completed their Regulation 16 Publicity Period consultation (18.12.2017). The Examination of the TNP commenced in April 2018.
21. Section 1 of the Neighbourhood Planning Act 2017 (inserted as S70(2)(aza) of the T&CP Act 1990) requires LPAs, in dealing with an application for planning permission, to have regard in to a post examination draft neighbourhood plan, so far as material to the application. The TNP has not yet reached the stage where this legal duty is triggered although the Examiner's Report is expected shortly.
22. There are no policies in the TNP which are material to the decisions which have been delegated to officers and which are the subject of this report.

Key Issues

23. The key issues to consider are whether the information submitted is sufficient to meet the requests for further information from the Development Management Committee of 08.05.2017 and whether the details so provided are acceptable. Information was requested in relation to both P/2015/0961/MPA and P/2015/0962/LB as detailed in paragraphs 13. & 14. These matters are considered in the following paragraphs.
- Strategy for relocating the traditional railings and form and extent of new railing detail
24. The details submitted show the section of railings along the length of the development (approx. 95m to the east of the Pavilion) can be removed and relocated to the South Quay subject to the suitability of the reuse of the cast iron railings.
25. The applicant has supplied details of the replacement railings which are a mix of timber, steel baluster, glass and steel rail and have a more modern appearance than those which they will replace. These details comply with the aims of providing a more modern form of enclosure to match that of the new development.
26. The details of the modern form of the railings are considered to show a high quality design, constructed of good quality materials. The submitted details are considered to show that the railings would be appropriate to the character of the new development. It is considered that the new railings comply with the requirements of Policies DE1, SS10 & HE1 of the Local Plan. Concomitantly the Councils Senior Historic Environment Officer has confirmed that he considers the railings to be an acceptable addition to the conservation area.
27. The submitted details are deemed to be acceptable in support of the information requested by committee. In order to ensure the traditional railings are reused on the South Quay, Condition 34 of Major Planning Application P/2015/0961/MPA states that prior to any works taking place in relation to the quayside, full details of the proposed relocation of the traditional bollards (railings) along the quayside along with measures for making good the quay walls shall be submitted to and approved in writing by the Local Planning Authority. This condition goes on to state that the relocation of the traditional bollards shall reflect the details set out within plan reference '3152-RAILS (Precedent Images)' received on the 24th May 2017 unless an alternative scheme for their relocation is submitted to and approved in writing by the Local Planning Authority. The reason for the addition of this condition is to ensure that the works to the quay walls and the relocation of the existing bollards are appropriately carried out in accordance with policy SS10.

- strategy for external and internal plant in relation to the listed building
28. The submitted strategy for external and internal plant shows that the majority of this will be located to the east of the building with the external plant being located on the flat roof sections where the existing plant is located. The strategy includes the removal of the existing rooftop plant. To avoid the visual impact of large equipment on the roof of the building, the primary mechanical plant has been situated on the ground floor in the least sensitive areas of the building. The external plant will consist mainly of six plenum louvered boxes which are not considered to be highly visible in the wider area.
29. The internal and external plant details and strategy submitted accords with the requirements of the Development Management Committee of 08.05.2017 for the Major Planning Application and Listed Building Consent. Based on the submitted details the strategy, which includes the removal of the existing roof plant, is considered to have an acceptable impact on the heritage asset and respects the scale, form and architectural detailing of the listed building. The Senior Historic Environment Officer has confirmed that he has no objection to the scheme. When considering the points raised in paras. 28. & 29, it is deemed that the internal and external plant to complies with policies SS10 & HE1.
- further details relating to the extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building
30. A revised landscape masterplan (reference '3152-1-17-SK2 R3 Masterplan' received 5th May 2017) provides details to confirm the use of natural stone paving extending beyond the site boundary opposite 'Offshore' which coordinates with the adjacent paving which is to be retained.
31. The details submitted are deemed to be acceptable and sufficient to accord with the resolution of the Development Management Committee of 08.05.2017. The natural stone paving is considered to be a good quality and robust material which reflects the high quality of the new development and the significance of the heritage asset whilst integrating with surrounding surface materials. The paving is deemed to comply with the requirements of policies DE1, HE1 & SS10

Other matters

Planning obligation

32. The section 106 agreement has been prepared in accordance with the committee resolution of 27.02.2017. The minutes of this committee meeting state thes106 should include a performance bond, if required. Officers have reviewed the application and have concluded that a performance bond is not required because it is instead intended to impose a condition (condition 03.) which includes a prohibition on occupation of any part of the development until the works for the restoration of the Pavilion have been completed. For convenience Condition 03. is worded as follows;

Prior to the commencement of the development, a detailed phasing agreement for the delivery of the overall scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall include the delivery of the fully repaired listed Pavilion building prior to any occupation of the development and the full delivery of the hotel shell and core prior to occupation of the 20th residential unit.

The detailed phasing agreement shall also include a timetable for the delivery of the public realm enhancements as included in plan reference '3152-1-17-SK2 R3 Masterplan' received 5th May 2017 and shaded blue on plan reference '3152-1-17-SK3 1 Public Realm' received 30th May 2017 and include the timetable for the making good of the quay walls and relocation of the traditional bollards to South Quay or an alternative scheme for their relocation submitted pursuant to condition 34.

None of the residential units shall be occupied until a S278 Agreement or Highways Licence has been entered into for the delivery of the agreed public realm enhancements as included in plan reference '3152-1-17-SK2 R3 Masterplan' received 5th May 2017 and shaded blue on plan reference '3152-1-17-SK3 1 Public Realm' received 30th May 2017 and they have been completed in full in accordance with the detailed plans to be submitted pursuant to condition 8 unless alternative satisfactory provision for delivery is otherwise submitted to and approved in writing by the Local Planning Authority as part of the wider phasing strategy to be submitted pursuant to this condition.

For the avoidance of doubt the provisions of the agreed phasing agreement shall thereafter be strictly adhered to as if they were a condition of this planning permission.

Reason: The development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. A key benefit is the regeneration of the harbour side through delivery of improvements to the public realm. It is important therefore that they are delivered in their entirety and in a timely fashion. This is necessary to meet the tests in paragraph 134 of the NPPF and to comply with policies SS10, HE1 DE1 and DE4 of the Torbay Local Plan 2012-2030 that would be otherwise compromised. These details are required prior to commencement as the development is only acceptable as the scale of public benefit outweighs the harm to the historic environment. Confirmation of delivery of these public benefits is therefore required to be submitted to and approved in writing by the Local Planning Authority to ensure certainty of the delivery of the works before any works are commenced.

CIL

33. Since the committee resolution the Council has adopted the Community Infrastructure Levy in its area. The residential parts of the development will be liable to pay the levy. The Regulation 123 list includes works for the removal of the Ziggurat and resurfacing of the Fish Quay. This means that money which may have been paid to the Council as 'deferred contributions' under the s.106 and could have been used towards the removal of the Ziggurat and resurfacing of the Fish Quay will now be collected through CIL but can still be used for these projects. The only material change in circumstances is that it is now more likely that sums will be received for these projects. Some aspects of the s106 have been altered to reflect this.

Conclusions

34. The details submitted are considered to be acceptable and are deemed sufficient to support the requests of the Development Management Committee of 08.05.2017.

Signing officer's name/date signed

35. I have read the officer's report and agree with the matters considered and the conclusions reached.

Name:

Date:



Mr David Jobbins
Luken Beck
30 Carlton Crescent
Southampton
SO15 2EW

Please reply to:

Mr Robert Brigden- Team Leader (Development Management)
Spatial Planning
2nd Floor, Electric House
Castle Circus, Torquay TQ1 3DR

My Ref: P/2015/0961

Your Ref:

Telephone: 01803 208803

E-mail: rob.brigden@torbay.gov.uk

Date: 10th October, 2018

Dear Mr Jobbins,

P/2015/0961/MPA & P/2015/0962/LBC – PLANNING AND LISTED BUILDING CONSENT APPLICATIONS FOR DEVELOPMENT AT THE TORQUAY PAVILION, MARINA CAR PAR AND OFFICE, AND ADJOINING LAND - TORQUAY

I write in relation to the above matter. As you know, the planning and listed building consent approvals, issued on 15th June this year, were quashed by an order of the Court, dated 2nd August 2018. This means that both applications must now be re-determined by the Local Planning Authority.

In their letter of 10th July 2018, the legal firm of Richard Buxton, Environmental & Public Law, listed five grounds on which their clients challenged the Council's decision to approve applications P/2105/0961 and P/2015/0962. The Council conceded the challenge on Ground 3; namely that there was an unlawful reliance on mitigation/avoidance measures when screening the proposals for harmful effects on protected habitats. However the legal advice that we have received is that all other grounds of challenge must be fully reviewed and, where possible, addressed before the applications are determined again. Going forward, any issues which are not satisfactorily addressed have the potential to be a reason for refusal of the applications.

To this end, please review both of the applications, along with the Richard Buxton letter enclosed, and submit such further information as you consider necessary in support of the applications including, but not necessarily limited to:

1. An up-to-date and fully-evidenced Independent Viability Assessment (IVA). The IVA should not only justify the scale of development and proposed planning obligations, but also address the specific points raised by the Save Cary Green group. Please note that the IVA must take into account the Council's adopted CIL Charging Schedule (May 2017) and accord with the Planning Practice Guidance on viability in planning which was issued on 24th July 2018 <https://www.gov.uk/guidance/viability>. For the avoidance of doubt, the applicant will be expected to pay the Council's costs in having the IVA independently

corroborated. Moreover, given the circumstances, the submitted IVA will not be treated as confidential and will be placed in the public domain.

2. An up-to-date and fully-evidenced Employment and Economic Impact Report, including construction costs and jobs created. The contents of this report must correspond with the IVA, for instance, using the same construction and other figures as those detailed in the other document.
3. A fully-justified legal argument to support your position that the terms of the proposed Section 106 agreement are lawful and accord with the provisions of Regulation 122 of the CIL Regulations; and/or your proposals to vary the Section 106 agreement so that it does accord with Regulation 122.
4. The application will need to be screened in accordance with the Habitats Regulations, to ascertain whether the proposed development should be the subject of a Habitats Regulations Assessment (HRA). If it is concluded that an HRA is necessary, then the Council, as the Competent Authority, will need to complete the appropriate assessment, which would consider whether the proposed development is likely to have significant effects on the Special Area of Conservation (SAC). In order to support the screening exercise and possible assessment, and, in any case, given the passage of time since the application was originally submitted, up to date information about the proposal's ecological effects will need to be submitted for our consideration.
5. A fully-justified legal argument to support your position that the proposals are 'enabling development' within the terms of Historic England's guidance, along with the guidance contained in the new NPPF and Planning Practice Guidance.
6. Where appropriate, the proposals should address the provisions of the emerging Torquay Neighbourhood Plan.

I trust the above points are sufficiently clear and look forward to receiving this information, along with any other details you consider appropriate, to support your application. We are keen to continue working with you in a positive and proactive way, and will be here to assist, where appropriate, with a view to determining the applications as quickly as possible. However, please bear in mind that the Council's resources are very limited, and we therefore require your cooperation to ensure a legally sound decision is issued. Given the course of events to date, and the continued interest in this site from third parties, the Council will not be in a position to approve your applications until it is satisfied that the above points have been adequately addressed.

Yours sincerely

Robert Brigden
Team Leader – Development Management

Application Number

P/2018/0579

Site Address

Hoburne Ltd
Grange Court Holiday Centre
Grange Road
Paignton
TQ4 7JP

Case Officer

Mr Alexis Moran

Ward

Goodrington With Roselands

Description

Use of land for static holiday lodge caravans.

Executive Summary/Key Outcomes

The development site, relates to two fields within the Grange Court Holiday Centre, Grange Road, Paignton. The site areas combined are approximately 1.3ha. The wider site is an existing 22 hectare acre holiday park.

The site is designated as being within a Core Tourism Investment Area in the Torbay Local Plan. It lies approximately 6km (as a straight line) from the maternity roost at Berry Head and is therefore within the 'Sustenance Zone' for the Berry Head Component of the South Hams Special Area of Conservation (SAC) and lies within a 'Strategic Flyway' that runs between Paignton Zoo and the coast.

The application seeks permission for the addition of 35 static caravans in two areas of the site used for touring caravans. Two types of static caravan are proposed, one which is 12m long by 6.1m wide and one which is 12m long by 4.3m wide. Each pitch would be sited on a concrete hardstanding base with two parking spaces. The parking spaces and internal access road would be finished with tarmac. Both areas proposed for the siting of the caravans would benefit from additional tree planting as part of the application.

The proposal is deemed to cater for the current demand for improved holiday accommodation within a site which has good quality facilities. The provision of improved tourist facilities is likely to help attract new visitors to the area which, it is considered, will in turn provide an economic benefit to Torbay. The proposal therefore complies with Policy TO1 of the Torbay Local Plan 2012-2030 and accords with the site's designation in the Local Plan as a Core Tourism Investment Area.

As the site lies on the western edge of the Greater Horseshoe bat sustenance zone and is partially within a strategic highway an Habitats Regulations

Assessment (HRA) screening was undertaken. This led to an Appropriate Assessment which concluded that, subject to mitigation measures secured by condition, the development would not adversely affect the integrity of the South Hams SAC alone or in combination with other proposals or projects.

Recommendation

Subject to the completion of a legal agreement/unilateral undertaking to secure a contribution towards monitoring of the holiday use, planning permission to be granted subject to the conditions detailed below, with the final drafting of conditions, and addressing any further material considerations that come to light, to be delegated to the Assistant Director for Planning and Transport.

Site Details

The site relates to Grange Court Holiday Centre, Grange Road, Paignton. The total site area occupied by the holiday camp is 22ha. The site is accessed by a road connected to the centre of the holiday park.

The development site consists of two fields One of the fields (Area A) is located on the western side of the holiday park, whilst the other (Area B) is located in the northern part.

The site is designated as being within a Core Tourism Investment Area in the Torbay Local Plan.

Detailed Proposals

The application seeks permission for the addition of thirty-five static caravans. Seven are to be sited in Area A is approximately 0.25ha in area. The remaining twenty-eight static caravans are to be sited in Area B, which is approximately 1.08ha in area. The two fields in question are currently used as amenity space.

Two types of static caravan are proposed, one which is 12m long by 6.1m wide and one which is 12m long by 4.3m wide.

Each pitch would be sited on a concrete hardstanding base with two parking spaces. The proposed parking spaces and additional internal access roads would be finished with tarmac.

The static caravans are intended to be operated for a holiday use for 12 months of the year.

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")

Material Considerations

- Emerging Brixham Peninsula Neighbourhood Plan
- 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

Drainage Engineer - No objection subject to the implementation of the submitted drainage scheme.

Arboricultural Officer - No objections

South West Water - The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable

Highways - No objections.

Ecological consultant - subject to the incorporation of suitable mitigation measures the HRA Screening Assessment and consequent Appropriate Assessment advises that the development is not likely to have a Significant Effect on the South Devon SAC alone or in combination with other proposals or projects.

Summary of Representations

No representations have been received from the general public.

Relevant Planning History

P/2016/0633 - Redevelopment of touring section (Woodland Glade) to holiday static caravans with 12 month holiday season; APPROVED 06.07.2018.

P/2016/0625 - Redevelopment of touring section (Hill View) to holiday static caravans for 12 month holiday season, the proposal is for 29 static caravans; Pending consideration; APPROVED 12.01.2018.

Key Issues/Material Considerations

Principle of Development

The site is within a Core Tourism Investment Area. Policy TO1 (Tourism, events and culture) of the Local Plan aims to enhance Torbay's role as a premier tourism destination. In order to do this tourist facilities and accommodation will require improvement and modernisation to attract new visitors, particularly overnight visitors and increase overall spend.

The Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services supporting, in principle, the improvement of existing and provision of new tourist accommodation and attractions; subject to other Policies.

The Local Plan advises that Torbay is seeing increased visitor numbers and value, lengthening of the tourism season, increased spend, increased occupancies and overnight stays, growth in overseas visitor numbers and new tourism related development. This is backed up by visitor spend in Torbay which in 2011 was 8% higher than in 2006. Torbay's Tourism Strategy Turning the tide for tourism in Torbay, 2010-2015 states that in 2007 holiday parks in Paignton provided 5,800 of the total 18,500 bed spaces. Changing expectations mean an increasing number of visitors want to spend their holiday in good value, high quality modern accommodation.

The applicant wishes to cater for current trends in tourism, with the demand for improved holiday accommodation, and recent years have seen a reduced demand for touring pitches.

It is considered that the proposed static caravans provide an improved form of tourist accommodation within an established holiday park, which has benefits from a range of tourism-related facilities.

The proposal is deemed to help deliver the key requirements of Policy TO1 and complies with para. 83 of the NPPF, by providing improvements to an existing facility and helping attract new visitors; thus providing an economic benefit to Torbay. It is therefore considered that the proposal is compliant with Policy TO1 of the Local Plan.

Visual Impact

Policy DE1 states that development should be well designed, respecting and enhancing Torbay's special qualities and the character of the natural built environment including areas and buildings of historic interest. Policy C4 states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

Area A is well screened on its western boundary by existing trees, additional tree planting is proposed to its north, east and west boundaries. The site is located in

a somewhat elevated part of the site.

Area B is presently screened on its north, east and west boundaries by existing trees with additional tree planting proposed on its southern boundary and within the site to break up the form of the proposed static caravans.

The addition of a landscaping condition is deemed necessary to ensure the planting and retention of the proposed trees on areas A & B.

The addition of permanent structures in these areas of the site would alter their character. However it is considered that the addition of static caravans in these locations, with additional tree planting, would be a suitable form of development within the holiday park and would not be visually detrimental when viewed from the wider area. In order to ensure the appearance of the caravans is acceptable, a condition requiring an external materials schedule is deemed necessary.

Subject to the aforementioned landscaping and external materials conditions, the proposal is deemed to comply with Policy DE1 & C4.

The proposal would result in the loss of at least three trees over the two sites. The Council's Arboricultural Officer has not objected to this loss. Significant planting is proposed in mitigation and in order to screen the proposed sites from wider views. There is however the need to create a detailed landscape plan to address tree loss and integrate the proposed development into the existing landscape. It is considered that this should be required via a landscaping condition. The proposal is deemed to comply with Policy C4 in principle and mitigation planting has the potential to improve the natural features of the site.

The land to the north, west and south of the site is allocated as being within an Urban Landscape Protection Area (ULPA). The site is outside of the Urban Landscape Protection Area and it is not considered that the proposal would undermine it as an open landscape character considering the existing situation, the proposal's location within a wider, existing holiday park, and the proposed landscaping works. The proposal would comply with Policy C5.

The proposal is considered to be in accordance with Policies C4, C5, and DE1 of the Local Plan.

Amenity

Policy DE3 refers mainly to residential amenity, the proposals will have limited impact on the amenity of neighbouring residential properties given the closest is in excess of 250 metres away.

With regards to Policy TO1, although the development would result in the loss of areas used for amenity space. The proposal would improve the existing tourism offer of the site and it is within easy walking distance of public greenspace and a

short distance from Goodrington Sands beach.

The development would be acceptable in terms of amenity when considering Policies DE3 and TO1.

Ecology

The Conservation of Habitats and Species Regulations 2010 imposes on local authorities the duty imposed by the EU Habitats Directive to ensure that plans or projects will not adversely affect European Sites such as SACs. In order to fulfil this duty, the authority must carry out a Habitats Regulations Assessment (HRA) process.

An HRA screening was undertaken on the site which concluded that, in view of the fact mitigation measures are required to avoid or reduce any likely significant effects identified in the HRA Screening Assessment, there is likely to be a Significant Effect on the greater horseshoe bat features - alone or in combination with other proposals or projects.

Consequently, the application was subject to Appropriate Assessment to determine whether there is likely to be an adverse effect on the 'integrity' of the South Hams SAC. The Appropriate Assessment concluded that, subject to mitigation measures secured by condition, the development would not adversely affect the integrity of the South Hams SAC alone or in combination with other proposals or projects. These conditions relate to the submission of a Landscape Ecological Management Plan (LEMP), a Construction Ecological Management Plan (CEMP), a program of Ecological Monitoring and a condition to retain the Dark Areas and external lighting in accordance with the submitted Ecological Appraisal (BSG Nov 2018).

Highways

Policy TA3 (Parking requirement) states that 1 parking space per static caravan should be provided. The submitted layout plans confirm that two spaces per static caravan will be available, which confirms that the required standard will be met. The proposal would make use of established access arrangements onto the public highway and it is considered that the proposal would not result in any detriment to highway safety or amenity.

Drainage

The site is within flood zone 1. The proposed surface water system comprises of a combination of pipe networks and various SuDS features to ensure that surface water run-off from impermeable areas is properly managed. A drainage strategy and hydraulic calculations for the development have been submitted and deemed to be acceptable.

The Council's Drainage Engineer has confirmed that, providing the development is constructed in accordance with the submitted drainage strategy, there would

be no objections on drainage grounds to planning permission being granted. It is considered that a condition confirming this is necessary and, and subject to this, the proposal is in accordance with Policy ER1 of the Local Plan.

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

CIL

The CIL liability for this development is Nil.

S106

A contribution towards monitoring the holiday use of the units for a period of 5 years is required which equates to £720.00 based on 4 hours of monitoring per year.

Proactive Working

In accordance with the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions

The proposed development would be consistent with Policies TO1, NC1, TA3, ER1, ER2 and C5 of the Torbay Local Plan 2012-203. The proposal is considered to be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations, subject to the conditions itemised below and the completion of a legal agreement.

Condition(s)/Reason(s)

01. External lighting equipment will be installed and maintained in full accordance with the proposals and specifications set out in the Lighting Impact Assessment (Appendix 2 of the Ecological Appraisal) and Ecological Appraisal (BSG Nov 2018) and external light spill from the development during its operational life shall not exceed above 0.5 lux in the areas specified in the Dark Areas Map for Site Area A and B within Appendix G of the Lighting Impact Assessment (Appendix 2 of the Ecological Appraisal).

Reason: To ensure that there are no adverse effects arising from light spill that could otherwise disturb commuting and foraging bats and that would constitute an adverse effect on the integrity of the Berry Head component of the South Hams SAC and/or an offence under Regulation of the Habitat and Species Regulations 2010.

02. No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall be prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following.
- a) Risk assessment of potentially damaging construction activities.
 - b) Identification of 'biodiversity protection zones'.
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
 - d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
 - e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP: Biodiversity, and the actions that will be undertaken.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that there are no adverse effects arising from light spill that could otherwise disturb commuting and foraging bats and that would

constitute an adverse effect on the integrity of the Berry Head component of the South Hams SAC and/or an offence under Regulation of the Habitat and Species Regulations 2010. These measures are required prior to commencement to ensure that ecological features on the site are not unduly harmed.

03. Prior to occupation a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, shall be submitted and shall include the following
- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
 - g) Details of the body or organisation responsible for implementation of the plan.
 - h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: To ensure that there are no adverse effects arising from light spill that could otherwise disturb commuting and foraging bats and that would constitute an adverse effect on the integrity of the Berry Head component of the South Hams SAC and/or an offence under Regulation of the Habitat and Species Regulations 2010. These measures are required prior to commencement to ensure that ecological features on the site are not unduly harmed.

04. Prior to the occupation of any of the caravans hereby approved, a monitoring strategy shall be prepared with the purpose 'provide early warning of any change in site conditions (such as those brought about by loss of suitable habitat features or adverse light spill) that are likely to impair or disturb greater horseshoe bats being able to commute through the site adjacent to the site boundary'. The strategy will be prepared in

accordance with the specifications in BS42020; clause 11.2.3 and shall include the following;

- a) Aims and objectives of monitoring to match the stated purpose;
- b) Identification of adequate baseline conditions prior to the start of development (including light levels within the dark areas);
- c) Appropriate success criteria, thresholds, triggers and targets against which the continued effectiveness of the bats' commuting routes can be judged;
- d) Methods for data gathering and analysis (to include appropriate bat surveys and light monitoring);
- e) Location of monitoring/sampling points;
- f) Timing and duration of monitoring;
- g) Responsible persons and lines of communication;
- h) Contingencies and remedial measures that will be triggered should monitoring detect a change in site conditions;
- i) Review, and where appropriate, publication of results and outcomes. A report describing the results of monitoring shall be submitted to the local planning authority at intervals as identified in the Strategy. The report shall also set out where the results from monitoring show that site conditions are changing and consequently how contingencies and/or remedial action will be identified, agreed with the local planning authority, and then implemented so that the development still delivers the fully functioning bat commuting routes associated with the originally approved scheme. The monitoring strategy will be implemented in accordance with the approved details.

Reason: To ensure that there are no adverse effects arising from light spill that could otherwise disturb commuting and foraging bats and that would constitute an adverse effect on the integrity of the Berry Head component of the South Hams SAC and/or an offence under Regulation of the Habitat and Species Regulations 2010.

05. The works hereby approved shall be undertaken in full accordance with the submitted Tree Constraints, Impact Assessment & Tree Protection Method Statement (ref: BJU-mmi received 31.05.2018), the submitted Tree Retention & Protection Plan (ref: DEVBYTRP received 31.05.2018) & the submitted Root Protection Area Plan (ref: DEVBYRPA received 31.05.2018). The Construction Exclusion Zone fences and Horizontal Ground Protection indicated in the Tree Constraints, Impact Assessment & Tree Protection Method Statement (ref: BJU-mmi received 31.05.2018), shall be installed before construction materials or plant enters the site and shall be retained at all times throughout the construction phase.

Reason: In the interests of the amenities of the area and in order to accord

with Policies C4, DE1 and NC1 of the Torbay Local Plan 2012-2030

06. Prior to the first use of the caravans hereby approved, details of all proposed hard and soft landscaping shall have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding and turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of biodiversity and to secure a landscape scheme that will complement the development in the interests of visual amenity in accordance with Policies C4, DE1 and NC1 of the Torbay Local Plan 2012-2030

07. Clearance of any potential bird nesting habitat should only be undertaken outside of the bird nesting season (undertaken between September and end of February) or following confirmation immediately prior to clearance from a suitably qualified ecologist that no nesting birds are present. If a nest(s) is found, works have to be delayed until young birds have fledged and the nest(s) is inactive.

Reason: To ensure no harm to breeding birds in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF. The reasons why the works must be carried out during the bird breeding season are required pre-commencement as specified to ensure that breeding birds are not harmed by building operations or vegetation removal.

08. Prior to the occupation of the caravans, full details (to include plans and elevations to an identified scale) of suitable secure and covered cycle storage shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall then be implemented in full as approved prior to the first occupation of any of the lodges hereby approved and retained at all times thereafter.

Reason: To ensure that there are adequate cycle storage facilities available to meet the needs of future occupiers of the site and to accord with policy TA3 of the Torbay Local Plan 2012-2030.

09. Prior to the first use of the caravans hereby approved, the parking facilities shown on approval layout plans 1478-AA-019 & 1478-AB-019 (received

30.05.2018) shall be provided and thereafter permanently retained for the parking of vehicles in accordance with the approved plans.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policy TA3 of the Torbay Local Plan 2012-2030 Implementation of bin store area prior to occupation of dwellings

10. The development shall be undertaken in strict accordance with the submitted drainage details (ref 01B804053 001, 01B804053 001 Rev 1 & P2018-0579-3) and retained as such at all times thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and paragraph 103 of the NPPF

11. No more than 7 static caravans shall be sited within Area A, and no more than 28 static caravans shall be sited within Area B at any one time.

Reason: To ensure that the holiday accommodation is used for holiday purposes only to accord with policy TO1 of the Torbay Local Plan 2012-30.

12. Prior to the first use/occupation of the caravans hereby approved, full details (including elevations and plans to an identified scale and details of materials) of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment details shall be implemented prior to the first use/occupation of the caravans and retained as such at all times thereafter.

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

13. Prior to the installation of any static caravans on the site, a full external material schedule to include details of colour and texture, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the area in accordance with policy DE1 of the Torbay Local Plan 2012-2030.

14. Green travel packs shall be made available to all guests of the mobile holiday accommodation, with the packs at least including clear and precise information on all local bus, walking, cycling and ferry services / routes.

Reason: To ensure that there are adequate facilities included within the scheme to meet the needs of cyclists and to help deliver more sustainable means of transportation in accordance with policy TA3 Appendix F of the Torbay Local Plan 2012-2030.

15. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Class A of Part 2 of Schedule 2 (which includes gates, fences and walls) shall be constructed (other than hereby permitted, or unless the prior written consent of the Local Planning Authority has been obtained).

Reason: To ensure that the character and appearance of the locality are protected. This is in accordance with Policies DE1 and C1 of the Torbay Local Plan 2012-2030.

17. The holiday accommodation hereby approved shall be for holiday use only and not for permanent residential occupation and shall not be occupied as a person's sole or main residence. Following the first occupation of the first unit the on-site manager of the facility shall at all times maintain a register of the names of all the owners/occupiers of the holiday accommodation hereby approved and of their home addresses, and shall make this information available at all times to the Local Planning Authority.

Reason: To ensure that the holiday accommodation is used for holiday purposes in accordance with Policies TO1 & DE3 of the Torbay Local Plan.

18. Prior to the addition on site of any caravans hereby approved, detailed plans shall be submitted to the Local Planning Authority for its approval in writing, showing the datum levels for the bases upon which each caravan is to be positioned and the highest point of the roof of each caravan in relation to an agreed fixed point or O.S. datum. The development shall be carried out in accordance with the approved plan and shall be retained as such at all times thereafter.

Reason: To ensure that adequate information is available about the height of the caravans, and to ensure that this does not unduly affect the nature of the surrounding area in accordance with policies DE1, DE3 & C5 of the Torbay Local Plan 2012-2030.

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 planning approval.

Relevant Policies

DE1 - Design
DE3 - Development Amenity
TO1 - Tourism, events and culture
C4 - Trees, hedgerows and natural landscape
C5 - Urban landscape protection areas
NC1LFS - Biodiversity and Geodiversity_
ER1 - Flood Risk
ER2 - Water Management
TA3 - Parking requirements

Application Number

P/2018/0901

Site Address

Land South Of 27 Empire Road
Torquay
TQ1 4LF

Case Officer

Verity Clark

Ward

St Marychurch

Description

Formation of two detached two-storey dwellings (Revised plans received 29/01/19)

Executive Summary/Key Outcomes

The site is the combination of part of the curtilage of 27 Empire Road, which is a semi-detached two-storey dwelling, and a wedge-shaped parcel of land that sits to the south of No.27 that holds a derelict terrace of garages. The wedge-shaped parcel of land sits on "back-land" between Empire Road to the north and Forest Road to the south. The site can be accessed from Empire Road and Forest Road with two separate accesses. The proposal seeks the addition of two detached dwellings.

The principle of new residential development is accepted and it is considered that the dwellings are of a suitable size, scale, massing and visual appearance for the plot. The proposal will provide an acceptable standard of residential accommodation both internally and externally for future occupiers and adjacent neighbouring occupier and the existing property, subject to the imposition of planning conditions. The proposal is considered to be acceptable in terms of highways impact, whilst issues surrounding drainage, ecology, boundary treatments and landscaping can be agreed by way of planning conditions.

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

The proposal is considered to be in accordance with Policies DE1, DE3, H1, ER1, TA2, TA3 and NC1 of the adopted Torbay Local Plan 2012-2030 and is recommended for approval.

Recommendation

That planning permission be 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.

Statutory Determination Period

8 weeks. The determination date was the 7th November 2018. An extension of time to the 15th March 2019 has been agreed to allow the submission of revised plans.

Site Details

The site is the combination of part of the curtilage of 27 Empire Road, which is a semi-detached two-storey dwelling, and a wedge-shaped parcel of land that sits to the south of No.27 that holds a derelict terrace of garages. The wedge-shaped parcel of land sits on "back-land" between Empire Road to the north and Forest Road to the south. The site can be accessed from Empire Road and Forest Road with two separate accesses.

Detailed Proposals

The proposal seeks to demolish the existing structures within the site and form two detached, two-storey dwellings accessed by an existing vehicular access from Forest Road, between 120 and 122 Forest Road.

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")

Material Considerations

- Emerging Torquay Neighbourhood Plan
- 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

Highways: The Highways Design Guide states a private drive should have a passing place if over 25m long. The Applicant may argue the existing Drive has been there for years and generated more trips when used as a Garage block and commercial storage use.

Drainage: The developer has identified that infiltration drainage will not be feasible at this development and is therefore proposing a controlled discharge to

the combined sewer system. The proposed discharge rate is 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area. The developer must demonstrate that the surface water drainage for this development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Therefore the developer must supply hydraulic calculations for the entire surface water sewer system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change.

South West Water: The applicant must demonstrate how its proposed development will have separate foul and surface water drainage systems and not be detrimental to existing infrastructure, the public and environment (and that any provisions for protecting infrastructure have been agreed with SWWL as service-provider). The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable.

Summary Of Representations

Publication type: Neighbour notification letters/Site notices
8 objections have been received. Issues raised:

- Privacy and overlooking
- Drainage
- Property values
- Parking
- Health impacts
- Views
- Noise
- Emergency access
- Anti-social behaviour and crime
- Overdevelopment
- Size
- Design
- Construction work

The neighbour consultation period for this application is due to expire on the 27/02/19; any representations received before the date of the March Development Management Committee meeting will be reported verbally at that meeting.

Relevant Planning History

P/2015/0668 2 x, 3 bedroomed, semi-detached houses and a single 3 bedroomed, 1.5 story bungalow unit. Refused 28/08/2015

P/2014/1252 - 3 x Terraced 3 bed houses, plus a single 3 bed bungalow. Refused 01/04/2015 Appeal dismissed.

P/2006/0567 - Erection Of 3 No 2 Bedroom Houses With Integral Garages Served By Private Drive. Refused 23/06/2006

Key Issues/Material Considerations

The key issues and material considerations are considered to be;

1. Principle of development
2. The impact upon the character of the area
3. The impact upon the living conditions at neighbouring properties
4. The quality of the proposed residential environment
5. Highway / movement impacts
6. Drainage issues
7. Ecology

1. Principle of development

Policy H1 of the Torbay Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed.

The site is located within an established residential area and is considered to be a sustainable location for such development being in relatively close proximity to services and public transport routes. The proposal is considered to be acceptable in principle.

2. Impact upon the character of the area

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 Design 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.

The application site is a back-land plot within a residential area. The site has a very irregular shape and is on two main levels. The northern, higher part comprises the elongated plot of 27 Empire Road, a semi-detached house. The southern part is at a lower level and comprises a block of lock-up garages, with a small hardstanding, and a small workshop or storage building hemmed into a

narrow part of the site. It lies behind the back gardens of houses on Forest Road, with a narrow access track linking it to that street.

The proposed development includes two, two-storey detached dwellings located fairly centrally. Unit 1 sits to the west of the site next to the adjacent property, 110 Forest Road, and adjoins the boundary wall. The dwelling would include a single storey element which runs parallel to the western boundary wall with the remaining building being two-storeys in height. Parking for this unit would be provided to the east of the dwelling with the garden area located to the north adjacent to 27 Empire Road. Unit 2 sits to the east of unit 1 and includes a single-storey element on the eastern side elevation with the remaining bulk of the building being two storeys in height. Parking would be provided to the south of the dwelling adjacent to the rear boundary of the Forest Road properties with garden space provided to the north of the plot.

The area is very hilly and the street layout is irregular, so that the pattern of existing dwellings of various styles is also irregular and fairly dense in places. Previous applications on the site for larger developments have been refused due to the overdevelopment of the plot and resultant cramped appearance and impact on the surrounding properties. The current application has sought to overcome these concerns by significantly reducing the number of dwellings proposed allowing for more spacious plots and a reduced impact on neighbouring properties. The two proposed dwellings are considered to result in a suitable size, scale and visual appearance.

The footprint of the proposed dwellings will retain a suitably spacious character around the properties helping to reduce the overall impact of the development within the context of the locality. As the surrounding streetscene includes irregular development, and the existing plot includes sporadic buildings, the siting and orientation of the proposed dwellings are considered to be acceptable. The addition of two-storey properties in this location is considered to be appropriate due to the diverse nature of the dwellings in the area. The use of flat roofs, brick and cladding on the dwellings is considered to take reference from outbuildings and development which appears as back-land outbuildings and converted commercial buildings. The design and visual appearance of the units are therefore considered to be acceptable.

The proposed plots are considered sufficient to accommodate the proposed buildings, private amenity spaces, parking and manoeuvring areas, which indicates that the proposal would not result in an overdevelopment of the site.

Conditions are recommended to secure the details of cladding materials, boundary treatment, landscaping, bin storage, and the removal of permitted development rights to prevent an overdevelopment of the plots in future.

Subject to the use of these conditions, given the proposal's siting, scale, and

design, is the proposal is considered to be acceptable and without detriment to the character and appearance of the locality or street-scene in accordance with the NPPF and Policy DE1 of the Local Plan.

3. Impact upon the living conditions at neighbouring properties

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

The proposal has been modified during the course of the application in order to address concerns with the impact on neighbour amenity. Unit 1 includes a single storey element that sits along the western boundary wall adjacent to 110 Forest Road. This property is single storey in nature with the majority of its outside space located on the opposite side of its plot on the western side. The single storey nature of the proposed dwelling which is in closest proximity to this dwelling will be screened by the existing wall and is not considered to result in an overbearing or overly dominant addition to this property. The design has been modified to alter the first floor arrangement.

The first floor of unit 1 includes a corridor on the northern side of the dwelling with obscure glazed windows facing 27 Empire Road. One first-floor window is proposed on the western side elevation serving the bathroom which can be conditioned to be obscure glazed to ensure the amenity of the adjacent property is retained. The windows on the southern elevation at first-floor level have been amended to include directional windows. This will focus views to the south-east rather than directly to the rear. These windows will face towards the rear of the properties along Forest Road, however, due to the separation distances from the windows to the rear of the properties being over 20m, the relationship is considered to be acceptable. Unit 1 is therefore considered to have an acceptable relationship with the surrounding properties.

Unit 2 includes a corridor on the southern side of the dwelling, which includes windows with fixed louvered panels. This results in very limited outlook towards the rear of the properties on Forest Road resulting in an acceptable relationship. Large-scale details of this element should be conditioned to ensure an acceptable level of privacy is retained. First-floor directional windows are proposed for the northern elevation serving the bedrooms. This will direct views away from the rear of 27 Empire Road and instead result in longer range views towards the rear of the properties on St Margarets Avenue. Due to the separation distances from these windows to the rear of these neighbouring dwellings being over 20m this is considered to result in an acceptable relationship.

The movement of vehicles within the site and the addition of car parking along the southern boundary with the Forest Road properties to serve Unit 2, it is considered that the proposed access and parking arrangements would not result in unacceptable harm to the amenities of neighbours. Given that the difference in levels, and position of buildings and the high boundary wall would mitigate the

effects of vehicle movements, and a scheme of this size would be unlikely to generate excessive vehicle movements and activity, and as the site has also long been used for garaging and a workshop, the proposed vehicular movements are considered to have an acceptable impact on neighbouring amenity.

As such, with the addition of conditions to secure obscure glazing, boundary treatment, and the removal of permitted development rights, the proposal is considered to be acceptable in terms of impact on neighbour amenity and therefore accords with Policy DE3 in the Torbay Local Plan.

4. Quality of the proposed residential environment

Policy DE3 of the Local Plan which relates to development amenity requires that new residential units provide adequate floor space in order to achieve a pleasant and healthy environment. Provision of useable amenity space, including gardens and outdoor amenity area should be provided with a guidance of 55 square metres for new dwellings. Internal floor standards are set out from the DCLG technical housing standards document. This states the minimum internal floor space which should be provided and gives guidance on the minimum floor area. The minimum internal floor spaces set out by this guidance and reflected in Policy DE3 shows that a minimum floor space of 97m² square metres is required for a four bedroom two storey dwelling. Both dwellings meet this minimum standard and adequate light and outlook is considered to be provided to the main habitable rooms. Sufficient garden space is provided for both proposed dwellings and an adequate level of outside space is retained for 27 Empire Road.

It is therefore considered that an adequate standard of accommodation for the proposed dwellings are provided and adequate parking and outdoor amenity space is maintained for the existing dwelling in accordance with Policy DE3 of the Torbay Local Plan.

5. Highway and movement impact

Policy DE3 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 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 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development.

Appendix F of the Local Plan sets out that for new dwelling houses there is a two car parking space requirement per dwelling which the site has achieved. Due to the width of the access lane and hardstanding, turning within the plot would not be possible. Two turntables have been added within the site to allow turning and exit from the site in a forward gear. A condition can be employed to ensure that the parking spaces and turntable are delivered prior to the occupation of the

dwellings and are retained at all times.

Appendix F of the Local Plan also sets out the requirement of a provision of secure and covered cycle storage for at least two cycles per dwellinghouse and adequate bin storage for waste and recycling. This can be added as a condition.

The proposal is considered to comply with Policies DE3, TA2 and TA3 of the Local Plan.

6. Drainage

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.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. The Council's Drainage Engineer has noted that the developer has identified that infiltration drainage will not be feasible at this development and is therefore proposing a controlled discharge to the combined sewer system. The proposed discharge rate is 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area. The only hydraulic calculations that have been submitted are for the design of the attenuation tank. There are no hydraulic calculations for the surface water drainage system discharging to or from the attenuation tank. These are required to confirm that there is no risk of flooding to properties on the site or any increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. The developer must supply a drawing showing the proposed surface water drainage for the development which provides details of the proposed manhole cover levels, invert levels, pipe diameters, pipe gradients, pipe numbering used in the hydraulic modelling and details of the impermeable areas discharging to each pipe length. All of this information is required to be included within the hydraulic modeling. The developer must demonstrate that the surface water drainage for this development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Therefore the developer must supply hydraulic calculations for the entire surface water sewer system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change.

With the addition of a condition requiring further information relating to the proposed drainage scheme, the proposal is considered to accord with Policy ER1 of the Local Plan.

7. Ecology

The application has been supported by a preliminary ecological appraisal.

The report concludes that there is low potential for birds to nest on the site however it is advised that the bramble and ivy that covers the garages is removed prior to the beginning of the bird breeding season. Though basking opportunities exist for reptiles there is no foraging habitat in the vicinity. It is therefore low possibility that slow worms are present. The piles of fences and all the other debris has been around longer. When the land is cleared for development it is necessary to carefully dismantle any piles of rocks or metal debris. The structures surveyed have been assessed as having limited suitable features for roosting bats. All the structures have a corrugated asbestos/plastic roof and concrete block walls which provide negligible opportunities for crevice dwelling bat species. None of the buildings have suitable access for void dwelling bats (such as horseshoe species) and do not provide appropriate roosting provisions for these species.

With the addition of conditions the proposal is considered to accord with Policy NC1 of the Local Plan.

Other Considerations

The Torquay Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The relevant policy for this application is Policy TH8 (Established Architecture). This policy requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings. The proposal is considered to comply with this policy. Policy TH9 (Parking Facilities) requires that all housing developments meet the guideline parking requirements unless it is shown to not increase on-street parking arising from the development or the development is within the town centre and an easy walk of a public car park. Sufficient parking is provided for the existing and proposed dwellings. The proposal is therefore considered to accord with the Torquay Neighbourhood Plan Policy.

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.

Conclusions

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

Condition(s)/Reason(s)

01. No development shall take place until a method statement for the construction of the development hereby approved has been submitted to and approved by the Local Planning Authority. The statement shall provide details of the management of material deliveries and where they will be stored; measures for minimising noise and preventing dust-drift; the times of construction on the site; and the management of parking provision for contractors working on the site. The development shall be carried out in accordance with the approved details.

Reason: This information is required prior to the commencement of the development as it will confirm how the construction process will be managed in the interests of highway safety and local amenity in accordance with policies TA1, TA2 and DE3 of the Torbay Local Plan 2012-2030.

02. Prior to the commencement of the development, details of the means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the proposed surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water

drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 30% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 30% allowance for climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream. The development shall not be utilised until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests to adapting to climate change and managing flood risk, and in order to accord with saved Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and paragraph 103 of the NPPF. These details are required pre-commencement as specified as Torbay has been designated as a Critical Drainage Area and to ensure that a surface water drainage system is designed appropriately in light of this designation.

03. Prior to the commencement of the development above damp proof course, details of all proposed hard and soft landscaping shall have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of biodiversity and to secure a landscape scheme that will complement the development in the interests of visual amenity in accordance with policies NC1 and C4 of the Torbay Local Plan 2012-2030.

04. Prior to the commencement of any works above damp proof course level on the new dwellings, samples of all the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and shall be retained as such.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the streetscene in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

05. Prior to the first occupation of the dwellings hereby permitted, a scheme of

boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

05. Prior to the first occupation of the dwellings 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 of the Adopted Torbay Local Plan 2012-2030.

06. The dwellings hereby approved shall not be occupied or brought into use until the parking spaces and manoeuvring turntable areas detailed on the plan referenced "1026-C PL-001" (received on 31st January 2019) have been fully installed. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030.

08. The development shall proceed fully in accordance with the Preliminary Ecological Appraisal (plan reference 'P20180901-1 (preliminary)') hereby approved.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Torbay Local Plan.

09. Prior to the first occupation of the dwellings 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.

10. Prior to the first occupation of Unit 1 hereby approved, the two first-floor landing windows in the northern elevation and the first-floor window on the western side elevation serving the bathroom shall be fitted with obscure

glazing to Pilkington level 4, or an equivalent standard, in accordance with the approved plan referenced '1026-C PL-004', and shall either be fixed shut or subject to an opening restrictor of up to 100mm. These windows shall thereafter be permanently retained in that condition.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

11. Prior to the installation of the three fixed louvered panels on the first-floor southern elevation of unit 2 hereby permitted, elevations at a scale of 1:10 shall be submitted to and approved in writing by the Local Planning Authority. The works shall then proceed in accordance with the approved details.

Reason: To ensure an acceptable form of development in the interests of the amenity of the neighbouring properties in accordance with policy DE1 and SS10 of the New Torbay Local Plan 2012-2030.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no enlargements, improvements or other alteration shall take place to the proposed dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, with the exception of one ancillary structure each up to 10 cubic metres in volume, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

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 planning approval.

Relevant Policies

DE1 - Design
DE3 - Development Amenity
H1 - New housing on identified sites
TA2 - Development access

TA3 - Parking requirements
ER1 - Flood Risk
NC1LFS - Biodiversity and Geodiversity_

Application Number

P/2018/1136

Site Address

Curtilage Of 1 Laura Grove
Paignton
TQ3 1LL

Case Officer

Miss Emily Elliott

Ward

Preston

Description

Formation of dwelling & garage.

Executive Summary/Key Outcomes

This proposal was considered at the February 2019 Development Management Committee. Members resolved to defer the decision to allow officers to obtain additional information about the proposal's impacts in relation to neighbouring occupiers. The additional information requested relates to the boundary treatment and ground levels, including datum levels in relation to the ridge height of the existing garage, the height of the proposed patio, the ridge height of the proposed dwelling, and the ridge height of No.1 Laura Grove.

The plans have been revised to include the datum levels referred to. In the interests of improving the proposal's impacts on neighbours, the revised plans also include the removal of three ground floor windows on the rear (eastern) elevation of the proposal and a reduction in the size of the patio area with the introduction of a conservatory instead. Additional information about the existing boundary treatment between the application site and the adjoining property will also be provided during the committee meeting.

The application site contains a large derelict garage and historically forms part the curtilage of No.1 Laura Grove, Paignton. The proposal seeks to form a detached, two-storey dwelling with an integral garage, to be accompanied by off-street parking space and an outdoor amenity area. The proposal is considered to be acceptable, having regard to the Local Plan and all other material considerations.

The application was originally referred to Development Management Committee due to the number of objections that have been received.

Recommendation

Approval subject to the conditions listed below, with the final drafting of conditions and resolution of any outstanding material matters that may come to light, to be delegated to the Assistant Director for Planning and Transport.

Statutory Determination Period

8 weeks. The determination date was the 18th January 2019.

Site Details

The site, curtilage of 1 Laura Grove, Paignton, is a detached residential property located on the corner of Laura Grove and Southfield Avenue. The site would have access from Laura Grove and would be sited next to Barcombe Lane. The site has an existing detached garage at the northern end of the plot, which has a ridge height of 2.7m from ground level (this equates to 58.96m AOD).

For the avoidance of doubt the ridge height of the proposed dwelling from ground level would range from 7m to 8m as the site is sloped (average of 63.25m AOD); the patio area would 2.3m from ground level (57.28m AOD); and the ridge height of No.1 Laura Grove is 9.4m (60.77m AOD) when viewed from Laura Grove. The site slopes down towards the southern edge of the site by some 1.4 metres. 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 proposal seeks to form a three bedroom dwelling with an integral garage in the curtilage of 1 Laura Grove, Paignton. The proposed dwelling includes an off-street parking space and outdoor amenity space. The proposal is two storey dwelling with the first-floor accommodation being located within the roof space.

Since the deferral of the application, the plans have been revised to remove the rear (eastern) elevation ground floor windows, which would have faced the garden of No.18 Southfield Avenue. The revisions also include a conservatory which will remove a section of the patio, therefore continuing the blank elevation of the ground floor eastern elevation. The proposed plans show a 1.7 metre high screen/wall to the proposed patio's eastern elevation and south-eastern corner. The kitchen door has been relocated from the southern elevation to the northern elevation. A 2.1 metre high section of screening has been proposed to the eastern boundary between the site and No.18 Southfield Avenue, which would provide additional privacy screening from the curtilage of the proposed dwelling.

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")

Material Considerations

- Emerging Paignton Neighbourhood Plan
- 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

Highways: The Highways Development Control Standing Advice for Minor Developments applies to this Application.

Drainage Engineer: No objections, condition recommended.

Summary Of Representations

Publication type: Neighbour notification letters/Site notice

4 objections have been received. Issues raised:

- Loss of privacy
- Overdevelopment
- Internal and external space standards
- Traffic and access
- Sets a precedent
- Overbearing
- Parking standards
- Not in keeping with the local area
- Previous planning history
- Impact on local area
- Drainage
- Visibility
- Permitted Development Rights

Relevant Planning History

P/2004/0734: Erection Of Detached Dwelling With Attached Garage; Erection Of Detached Garage For Use By No 1 Laura Grove (As revised by letter and plan received 24/6/04). Refused 25/06/2004.

P/2004/1564: Erection of Detached Dwelling with Garage; Erection of Detached for Use by No. 1 Laura Grove (Revised Scheme) (as revised by plans received 15 October 2004). Refused 10/11/2004.

P/2005/0278: Detached Bungalow with Garage. Refused 23/03/2005.

P/2006/0339: Gateways Installed To End Of Brick Driveway. Approved 24/04/2006.

Key Issues/Material Considerations

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

1. Principle of development
2. Impact on the character and appearance of the streetscene
3. Impact upon the amenity of neighbouring properties
4. Quality of residential accommodation
5. Drainage
6. Transport Issues
7. Ecology
8. Other Considerations

1. Principle of development

Policy H1 of the Torbay Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed.

The site is located within an established residential area and is considered to be a sustainable location for such development being in relatively close proximity to services and public transport routes. The proposal is considered to be acceptable in principle.

It should be noted that previously, in 2004 and 2005, planning permission was refused for a new dwelling in the curtilage of No.1 Laura Grove, Paignton. The reasons for refusal include overdevelopment, impact on residential amenity, potential precedent. These concerns will be addressed in the body of this report.

2. Impact on the character and appearance of the streetscene

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 Design 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.

Objectors have raised concerns that the proposal is a form of overdevelopment; it is not in keeping with the local area; and it would have a negative impact on the local area. Concerns have also been raised that permitting the proposal will set a precedent and that the proposal has not addressed previous planning concerns.

Planning permission has previously been refused on site for a new dwelling in the curtilage of No.1 Laura Grove, Paignton. Previous refusals have stated that a

dwelling would be detrimental to neighbouring occupiers. Furthermore, that a dwelling would be detrimental to the streetscene and on the character of the area generally.

There is a somewhat mixed local character and pattern of development within the locality, although it is generally characterised by detached and semi-detached houses within spacious plots. The site has been vacant and cleared for a number of years. The proposed dwelling would provide an active frontage along the highway.

An adequate area of outside space would be provided for both the proposal and No.1 Laura Grove, and it is considered that the two properties that would result from the proposal would not appear cramped. The overall layout is considered to be consistent with the urban grain of the area and without detriment to the character and appearance of the locality. The general scale of development is considered commensurate with the locality when considering the mix of dwelling types in the area.

It should be noted that the site slopes down to the south and that the natural ground levels therefore fluctuate on site, however it is considered that the proposal positively addresses the topography and provides a dwelling of a reasonable size, scale and massing.

In considering the design, regard must be given to the surrounding streetscene where there is a mixture of house types and designs and therefore given the context of the area, the proposal is considered to be acceptable in terms of design and impact on the streetscene. It is considered that as there is no distinct house type or character that the proposal is in keeping with the local area. The proposal would have a traditional appearance, having a pitched roof, including hipped and gable features. Details of the proposed materials, boundary treatment, bin storage, and landscaping can be secured through the use of conditions. It is also recommended that permitted development rights be removed to prevent an over-development of the existing and proposed properties in future.

Given the proposal's siting, scale, and visual appearance, it is considered to be acceptable and without unacceptable detriment to the character and appearance of the locality or streetscene in accordance with the NPPF and Policy DE1 of the Local Plan.

3. Quality of residential accommodation

Policy DE3 of the Local Plan which relates to development amenity requires that new residential units provide adequate floor space in order to achieve a pleasant and healthy environment. Provision of useable amenity space, including gardens and outdoor amenity area should be provided with a guidance of 55 square metres for new dwellings. Internal floor standards are set out from the DCLG

technical housing standards document. This states the minimum internal floor space which should be provided and gives guidance on the minimum floor area. The minimum internal floor spaces set out by this guidance and reflected in Policy DE3 shows that a minimum floor space of 102 square metres is required for a three bedroom two storey dwelling.

Concerns have been raised by objectors that there is insufficient outdoor amenity space. The proposed internal floor area for the proposed dwelling is 126 square metres and the useable outside amenity space would be around 123 square metres, which is well above the standards required by the Local plan. No.1 Laura Grove would retain over 100 square metres of outdoor amenity space.

It is therefore considered that an adequate standard of accommodation for the existing and proposed dwellings would be provided.

4. Amenity impact

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

Concerns have been raised with regard to permitted development rights. To prevent an over-development of the site and potential harm to neighbouring amenity, a condition is recommended to remove permitted development rights from the proposal. Concerns have also been raised by the occupiers of dwellings on the opposite site of the highway, however, it is considered that the proposal would not have a detrimental impact upon those occupiers given the nature of the proposal and the separation distances involved.

The proposed dwelling would be located approximately 21 metres from the rear of No.1 Laura Grove and approximately 22 metres from the rear of No.18 Southfield Avenue. The revised plans displays datum levels across the site, which show the proposed dwelling would have a maximum height of around 4.3 metres higher than the existing garage. It should be noted that the proposed dwelling has a staggered roof, therefore the section of the roof closest to No.18 Southfield Avenue is 3.34 metres higher than the existing detached garage.

The eastern elevation of the proposed dwelling would be located in close proximity to No.18 Southfield Avenue's outdoor amenity space, separated by a path, which would have a 2.1m high screen fence installed alongside it. The rear (eastern) elevation of the proposed dwelling would have one opening to the first floor. The previous scheme included three openings to the ground floor which have now been removed to maintain privacy between the occupier of the proposed dwelling and the outdoor amenity space of No.18 Southfield Avenue. It should be noted that the opening to the first floor will serve a hallway, which is not a habitable room; in any case, the revised plans have labelled this opening as obscurely glazed, and this will be secured by means of a planning condition.

The rear elevation is approximately 13 metres from the southern boundary of the site. The site benefits from dense vegetation between itself and No.18 Southfield Avenue with No.1 Laura Grove's garage also providing screening. The proposed patio which would be accessed via the conservatory would have an obscurely-glazed screen conditioned to both the eastern and part of the southern flanks to prevent any unacceptable overlooking into No.18 Southfield Avenue's outdoor amenity space, particularly when the boundary screening and separation distances between the dwellings are considered. A further planning condition will be added to secure the landscaping of the scheme which will provide natural screening between the site and the adjacent properties, including the retention of any existing vegetation located along the eastern boundary and under the control of the applicant.

Considering the proposal's siting, scale, and design, along with its relationship to neighbouring properties in terms of separation distances and ground/floor levels, and the presence of existing boundary screening, and intervening structures, the proposal would not result in unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, and access to natural light. This is subject to the use of planning conditions to secure the obscure glazing, privacy screens, and landscaping referred to above. As such, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

5. Drainage

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.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. Given the nature of the proposal, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice. The Council's Drainage Engineer has reviewed the information submitted with the application and raises no objection to the proposed flood risk strategy and recommends a condition is employed to secure the means of surface water drainage.

As such, the proposal would comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

6. Transport issues

Policy TA3 of the Torbay Local Plan states that new dwellings should be served by two car parking spaces. The proposal provides adequate off street parking provision and would therefore comply with Policy TA3 of the Torbay Local Plan. The parking space size requirements are set out in Policy TA3 and Appendix F of the Local Plan with off-street parking spaces abutting the public highway requiring 3.2 metres by 5.5 metres to ensure that the vehicles does not overhang

or obstruct the pavement or onto the public highway. Furthermore, the dimensions for a garage under Appendix F are 3.3 metres by 6 metres.

Concerns raised by objectors state that there is insufficient parking and a lack of on-street parking. Further comments also raise concerns regarding visibility when using vehicles on Barcombe Lane.

The Council's Highways Engineer has stated that the Highways Development Control Standing Advice for Minor Developments applies to this application. The proposal will remove one on-street parking space, however this loss is outweighed by the benefit of the proposal offering two off-street parking spaces. The proposal includes an integral garage and an off-street parking space. The proposed garage measures approximately 3.5 metres by 6.5 metres and the off-street parking space measures approximately 3.5 metres by 6 metres. The proposed driveway will have a 1 in 8 gradient which is considered acceptable when taking into account the Highways Development Control Standing Advice for Minor Developments. With regards to visibility and concerns arising around Barcombe Lane, planning conditions relating to boundary treatments on the northern and western boundaries can be sought to ensure that visibility is not unacceptably affected. Therefore, the proposal complies with Policies TA2 and TA3 of the Local Plan.

Conditions are recommended to secure a scheme of boundary treatment to ensure the walls at the entrance to the site do not exceed 1 metre in height on Laura Grove and on the northern boundary which abuts Barcombe Lane. An informative can be employed to bring to the applicant's attention the requirement that a licence be sought for works within the highway.

7. Ecology

The site is a vacant parcel of land in the rear curtilage of No.1 Laura Grove, Paignton. The site has been cleared and would involve the demolition of a large derelict garage to the northern boundary of the site. An informative will be used with the consent to ensure that protected species are protected.

It is considered that the proposal would not have an adverse impact on ecology. The proposal is therefore considered to be in accordance with Policy NC1 of the Torbay Local Plan.

8. Other Considerations

5-year Housing Land Supply

The Council cannot presently demonstrate a deliverable 5 year housing land supply, as required by paragraph 47 of the National Planning Policy Framework (NPPF). At present, the Council is estimated to have a 3.96 year availability of housing land, as evidenced in the 'Torbay Council - Five Year Land Supply

Statement (December 2017)'.

The site could deliver 1 new dwelling and as such would be defined as a 'Windfall' site and would contribute to the under supply of housing in Torbay.

Neighbourhood Plan

The Paignton Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The relevant policy for this application is Policy PNP1(c) Design Principles. This policy requires development proposals to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials. The proposal is considered to comply with this policy as the design, height and density of the proposed dwelling, and the scale and bulk of the proposal is in keeping with the surrounding area. The proposal is therefore considered to accord with the Paignton Neighbourhood Plan.

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.

Proactive Working

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and creative way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions

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

Condition(s)/Reason(s)

1. No development shall take place until a method statement for the construction of the development hereby approved has been submitted to and approved by the Local Planning Authority. The statement shall provide details of the management of material deliveries and where they will be stored; measures for minimising noise and preventing dust-drift; the times of construction on the site; and the management of parking provision for contractors working on the site. The development shall be carried out in accordance with the approved details.

Reason: This information is required prior to the commencement of the development as it will confirm how the construction process will be managed in the interests of highway safety and local amenity in accordance with policies TA1, TA2 and DE3 of the Torbay Local Plan 2012-2030.

2. No development shall take place until details of all proposed hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of biodiversity and to secure a landscape scheme that will complement the development in the interests of visual amenity in accordance with policies NC1 and C4 of the Torbay Local Plan 2012-

2030.

3. Prior to commencement of any works above damp proof course level on the new dwellings, samples of all the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and shall be retained as such.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the streetscene in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

4. Prior to the first occupation of the development hereby permitted, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

5. Prior to the first occupation 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 of the Adopted Torbay Local Plan 2012-2030.

6. Prior to the first use or occupation of the dwelling hereby approved the parking area and garage shown on the approved plan (Plan Reference '1842-5 (Inc OS-Garage & roof)') received 8th November 2018 shall be provided and laid out in accordance with the plans. Thereafter the spaces shall be kept permanently available for the purposes of parking for the residents of the dwelling.

Reason: In order to provide adequate parking provision, in accordance with Policy TA3 of the Torbay Local Plan 2012 - 2030.

7. Prior to the first occupation 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.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no enlargements, improvements or other alteration shall take place to either the proposed or existing dwelling within the application site, and no outbuildings or other means of enclosure shall be erected within the garden areas of either dwelling, with the exception of one ancillary structure each up to 10 cubic metres in volume, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

9. Prior to the occupation of the dwelling hereby approved, the first floor landing window in the eastern flank elevation of the development hereby approved shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. This window shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The window shall thereafter be permanently retained in that condition.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

10. Prior to the approved patio being brought into use, a 1.7m high obscure glazed privacy screen (to a minimum of Pilkington Level 3 or similar standard) shall be erected on the patio's eastern side and south-eastern corner, in accordance with the approved details plan reference '1842-8 (inc os)' received on 14th February 2019, and shall thereafter be retained for the life of the development.

Reason: In the interests of adjoining amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

11. In accordance with the submitted flood risk assessment received 8th November 2018, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to

the commencement of development.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 and ER2 of the Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

Informative(s)

01. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
02. Responsibilities of the applicant / developer.

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

03. 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 planning approval.

Relevant Policies

DE1 - Design
DE3 - Development Amenity
H1 - New housing on identified sites
ER1 - Flood Risk
TA2 - Development access

TA3 - Parking requirements
NC1LFS - Biodiversity and Geodiversity_

Application Number

P/2018/1211

Site Address

Barton County Junior And Infant School
Barton Hill Road
Torquay
TQ2 8JA

Case Officer

Verity Clark

Ward

Shiphay With The Willows

Description

Formation of nursery building.

Executive Summary/Key Outcomes

This planning application is for the erection of a new detached building within the south-eastern part of the site, facing Barton Hill Road, to form a new nursery building with two new classrooms and associated facilities. The proposal would allow for the conversion of a section of the existing school building, which is currently used as a nursery, to new classrooms serving the older pupils.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, development amenity, highways and flood risk. A tree report has been requested by the Council's Arboricultural Officer and Members will be verbally updated at the Committee meeting on this issue.

Recommendation

That planning permission be granted subject to the conditions listed below, with the final drafting of conditions and resolution of any outstanding matters to be delegated to the Assistant Director for Planning and Transport.

Statutory Determination Period

5th February 2019. An extension of time to the 15th March 2019 has been agreed.

Site Details

The application relates to Barton County Junior and Infant School, Barton Hill Road, Torquay. The site contains a range of school buildings and a curtilage area comprised of recreation spaces, parking and access, and an open area of grassland between the front of the school buildings and Barton Hill Road. St Martin's Church, which is a Grade II Listed Building, is located beyond the site's north-eastern boundary. The site is not subject to any other designations. The ground levels of the proposed development area, which is located within the grassed area between the main complex of buildings and Barton Hill Road, sit below the level of the existing school buildings.

Detailed Proposals

This planning application proposes the formation of a detached, single-storey building to form a new nursery building with two new classrooms and associated facilities. The proposed building would be located within the area of grassland between the front of the existing school buildings and Barton Hill Road.

The proposal would allow for the conversion of an existing section of the existing buildings, which is currently used as a nursery, to new classrooms serving the older pupils.

The proposed extension would have a footprint of 272.66m² and would be sited at the front of the school facing Barton Hill Road. The building appears as two separate sections with a monopitch roof and a section of flat roof.

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")

Material Considerations

- Emerging Torquay Neighbourhood Plan
- 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

Highways Engineer: No response.

Strategic Transport Officer: Recommend the provision of a refreshed Travel Plan (including staff, children and visitors of the school) setting out a 30% modal shift (by foot, cycle or public transport) in accordance with policy TA3. This should address the 75% of staff journeys being by car for which there is insufficient parking available on-site. The TP should therefore include SMART targets, particularly aimed at the number of staff driving to the site. The TP should include an annual monitoring regime that with mitigation measure should targets not be met. This can be condition prior to occupation. I would also recommend a

condition that requires written consent of the LPA if pupil numbers increase by 30 pupils or more in accordance with TA2 & 3 Appendix F (Other Parking considerations table, page 298) to ensure that appropriate provision of safe and sustainable access is provided for all users. A Construction Management Plan should also be conditioned.

Sport England: The proposed development does not fall within our statutory remit or non-statutory remit however advice is given to aid the assessment of the application.

Arboricultural Officer: I note the presence of the mature lime trees on the front of the site. There is no tree report submitted to support the application and there is concern about building an occupied building closer to them. The tree report will need to consider these impacts as well as showing suitable protection for them.

Community Safety: No objection.

Conservation: No response.

Summary of Representations

Publication type: Neighbour notification letters/Site notice

7 objections have been received. Issues raised:

- Traffic and highways safety
- Parking
- Loss of sport facilities
- Foul sewage and waste disposal
- Lighting
- Visual impact
- Increase in staff and pupil numbers

Relevant Planning History

P/2016/0739 Reduction of building footprint from 162.80sqm to 133.28sqm.
Approved 03.08.2016

P/2016/0242 The erection of a new single storey teaching building with WC's.
Approved 22/06/16

P/2014/0507 New Multiple Use Games Area pitch. Approved 15/8/14

P/2012/0106 Formation of two double temporary classrooms sited on the school playing field to be used by pupils and staff during the internal refurbishment works of Barton Primary school. Approved 09.05.12

P/2011/1351 Formation of extension to provide new main reception facilities, replacement windows, provision of accessible parking spaces, realignment of paths, removal of pedestrian entrance gate and engineering works to improve

grass play areas. Approved 13.04.12

P/2003/0920 Extension To Form Class Room And Nursery. Approved 09.07.03

P/1999/1200 Erection Of Office Extension. Approved 28.10.99

P/1999/0001 Formation Of Playing Field Together With Access Road And Car Park. Approved 22.03.99

P/1998/1259 Erection Of Link Corridor. Approved 30.10.98

P/1997/0838 Demolition Of Existing Toilet Building. New Two Storey Extension With Two Classrooms And Toilets. Brick Cladding To Timber Frame Building Concrete Roof Tiles On Timber Roof Trusses. Approved 09.10.97

P/1993/0985 Two Storey Extension To Provide Two Classrooms. Approved 16.11.93

Key Issues/Material Considerations

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

1. Principle of Development
2. Visual Impact
3. Development Amenity
4. Highways
5. Trees
6. Flood Risk
7. Other Considerations

1. Principle of Development

Policy SS11 (Sustainable Communities) of the Local Plan states that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle. Policy SS11 details further that development proposals will be assessed against 13 criteria, which includes promoting social inclusion, and seeking to eliminate exclusion based on access to housing, health, education, recreation or other facilities. Policy SC3 (Education, Skills and Local Labour) of the Local Plan specifies that the Local Plan will support the improvement of existing and provision of new educational facilities to meet identified needs in Torbay. Policy SC3 notes further that this includes the expansion of schools to meet identified short to medium-term needs. Policy SC5 (Child Poverty) of the Local Plan states that new development will be assessed for its contribution towards reducing child poverty, proportionate to the scale and nature of the proposal. This includes the need to support investment in existing schools and make appropriate contributions, and improve equality of access to high quality education provision for all, including early-years education.

The proposed development would improve the education facilities in the area. As such, it is deemed that the principle of the development would accord with Policies SS11, SC3 and SC5 of the Local Plan.

2. Character of the Area and Heritage Assets

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.

The proposal seeks the formation of a new detached building to form a new nursery with two new classrooms and associated facilities. The proposed building appears as two separate sections with a mono-pitch roof and a section of flat roof. The proposed structure would have a footprint of approximately 272.66m² and would be sited at the front of the school facing Barton Hill Road. The proposal would sit below the existing complex of buildings on lower ground. This results in a level of subservience to the existing school buildings and allows views from the streetscene through to the main teaching block behind. Areas of grass would be retained around the proposed building. It is noted that the boundary between the wider site and the public highway is formed by mature trees and other vegetation.

Given its siting, scale, and design it is considered that the proposal would result in an acceptable addition to the existing school site and the wider area in terms of its impact on the character of the area. A condition is recommended to secure the approval of external materials.

Given its single-storey design and siting on lower ground; its relationship to the existing complex of school buildings; and the separation distances involved, it is considered that the proposal would have an acceptable impact on the setting of the adjacent listed building; St Martin's Church. The proposal would not result in any harm to heritage assets. In terms of its impact on the character of the area and heritage assets, the proposal is considered to be in accordance with Policies DE1 and HE1 of the Local Plan, and the guidance contained in the NPPF.

3. Development Amenity

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

The proposal would be sited to the South East of the school adjacent to Barton Hill Road. Given its siting, scale, and design, it is considered that the proposal

would not result in any unacceptable harm to the amenities of neighbours.

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

4. Highways

The Council's Strategic Transport Officer has noted that the new nursery building would potentially provide 4 full-time additional staff with an additional 10 to 50 pupils. The supporting 2018 Travel Plan states that, including the nursery facility, the school site would have 661 pupils and 100 full-time staff with 18 part time staff (109 full-time equivalent). Policy TA3 and Appendix F recommends that a pre-school nursery should provide 1 car parking space per 4 full-time equivalent staff, plus 1 cycle space per 4 staff. This would equate to one additional space of each for the unit proposed. Appendix F also recommends 1 space per 2.5 FTE for Primary/Secondary Schools.

The submitted travel plan states that there are 65 staff parking spaces (including 3 disabled spaces), 12 scooter parking spaces, and 67 cycle spaces at the site. The Design and Access Statement indicates an 'overflow car park' for 30 off Beechfield Avenue, which is inclusive of the 67 above. The travel plan staff survey (2016) indicates that over 70% - 80% staff drive.

It is noted that there are objections to the proposal on Highway grounds and that the surrounding area can be congested at peak times. It is therefore recommended that the provision of a refreshed Travel Plan (including staff, children and visitors of the school) setting out a 30% modal shift (by foot, cycle or public transport) in accordance with policy TA3 is required by condition. This should include SMART targets, particularly aimed at the number of staff driving to the site. The travel plan should include an annual monitoring regime that with mitigation measure should targets not be met. It is also recommended that a condition is added which requires written consent of the Local Planning Authority if pupil numbers increase by 30 pupils or more in accordance with TA2 & 3 Appendix F (Other Parking considerations table, page 298) to ensure that appropriate provision of safe and sustainable access is provided for all users. A Construction Management Plan should also be conditioned.

Subject to the use of this condition, the proposal is considered to comply with Policies TA1, TA2 and TA3 of the Local Plan.

5. Trees

Consultation from the Council's Arboricultural Officer has noted the presence of mature lime trees at the front of the site. The submitted tree report is considered to be acceptable and a condition is proposed to ensure compliance with it.

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.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. Given the nature of the proposal, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1.

7. Other Considerations

The Torquay Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The relevant policy for this application is Policy TH8 (Established Architecture). This policy requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings. The proposal is considered to comply with this policy as the scale and bulk respect the characteristic of the school and of the existing building resulting in an acceptable design and appearance. The proposal is therefore considered to accord with the Torquay Neighbourhood Plan Policy.

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.

Conclusions

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

Condition(s)/Reason(s)

01. No development shall take place until a method statement for the construction of the development hereby approved has been submitted to and approved by the Local Planning Authority. The statement shall provide details of the management of material deliveries and where they will be stored; measures for minimising noise and preventing dust-drift; the times of construction on the site; and the management of parking provision for contractors working on the site. The development shall be carried out in accordance with the approved details.

Reason: This information is required prior to the commencement of the development as it will confirm how the construction process will be managed in the interests of highway safety and local amenity in accordance with policies TA1, TA2 and DE3 of the Torbay Local Plan 2012-2030.

02. Prior to the occupation of the building hereby approved, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out how at least 30% of the potential users can gain access by foot, bicycle or public transport, and how this will be implemented and monitored including SMART targets and annual reviews. The Travel Plan shall be continually monitored by a Travel Plan Coordinator (TPC) appointed to ensure that it meets its objectives and targets. In the event that the objectives and targets of the Travel Plan are not met, or if there is an increase above the number of 30 pupils on site, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of the Travel Plan or updated Travel Plan, shall be made available to the Local Planning Authority upon request during normal business hours and the contact details of the TPC shall be provided in all iterations of the Travel Plan.

Reason: In the interests of road safety and sustainability to encourage

walking, cycling and public transport use by staff, students and visitors in accordance with policies TA1 and TA2 of the Torbay Local Plan 2012-2030.

03. Prior to commencement of any works above damp proof course level on the new building, samples of all the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and shall be retained as such.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the streetscene in accordance with policy DE1 of the Torbay Local Plan 2012-2030.

04. In accordance with the submitted flood risk assessment dated 10th December 2018, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 and ER2 of the Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

05. Prior to the commencement of any works on site (including demolition and site clearance or tree works), the submitted tree protection measures shall be implemented according to the agreed Tree Protection Plan and Arboricultural Impact Assessment. This provides for the long term retention of the trees with details of tree protection and construction exclusion zones. No development or other operations shall take place except in complete accordance with the approved plan and report.

Reason: To ensure the continued wellbeing of the trees in the interests of the amenity of the area.

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 planning approval.

Relevant Policies

DE1 - Design

DE3 - Development Amenity

HE1 - Listed Buildings

SS11 - Sustainable Communities Strategy

SC3 - Education, skills and local labour

SC5 - Child poverty

TA1 - Transport and accessibility

TA2 - Development access

TA3 - Parking requirements

C4 - Trees, hedgerows and natural landscape

ER1 - Flood Risk

Application Number

P/2018/1283

Site Address

Exmouth View Hotel
St Albans Road
Torquay
TQ1 3LG

Case Officer

Mr Scott Jones

Ward

St Marychurch

Description

Demolition of existing hotel and construction of twelve apartments, two townhouses, and associated car parking.

Executive Summary

The site is a corner plot at the junction of St Albans Road and Bedford Road close to Babbacombe Downs in an area with a mixed residential and holiday character. It holds a three-storey flat roofed hotel.

In terms of designations the site is within a Critical Drainage Area but falls outside the boundaries of the Babbacombe Downs Conservation Area and the Babbacombe Downs Core Tourism Investment Area.

The proposal is to demolish the existing hotel and redevelop the plot to provide 12 2-bed apartments and 2 houses. 14 parking spaces are proposed, 12 of which are within a rear courtyard, together with cycle and waste storage facilities.

The 12 apartments are provided over four floors in a modern-looking white rendered building with grey windows and doors under a flat parapet enclosed roof. The 2 dwellings book-end the apartment building and are a storey lower with three floors of accommodation. The dwellings are modern in design with rendered finishes to the front and back with copper cladding to the sides and roofs.

The principle of residential use and the loss of a hotel is considered acceptable when considering the location and the limited significance of the current hotel as a holiday facility. The proposal presents acceptable living environments for future occupiers and will also have a limited impact upon the amenity afforded adjacent occupiers, with some betterment to the immediate neighbours. The parking provision and highway impact is considered acceptable subject to mitigation secured by amending the parking restrictions in the area, which will require a revised Road Traffic Order. Subject to the receipt of acceptable detailed design (required prior to determination) there would be no increase in flood risk. There are no ecology constraints that constrain the ability to grant planning permission,

subject to recommended conditions.

In terms of other material considerations the provision of 14 units would provide much needed housing where there is presently a lack of a demonstrable 5 year supply. The proposal would also provide construction jobs during the build phase and future household spend would also help support local businesses. These benefits all weigh in favour of the proposal.

The proposal is considered suitable for approval when considering the Local Plan, the NPPF when taken as a whole, the post-examination version of the Torquay Neighbourhood Plan, and all other material considerations.

Recommendation

Approval, subject to;

1. The receipt of surface water drainage details to the satisfaction of Officers that ensure that there will be no increased risk of flooding,
2. Highway mitigation as outlined within this report to amend parking restrictions in the immediate area, secured either through an upfront payment or S106 legal agreement, and
3. Conditions, the drafting of which is to be delegated to the Assistant Director of Planning and Transport. Draft conditions are provided at the end of this report.

The resolution of any other material matters that come to light to be delegated to the Assistant Director of Planning and Transport.

Statutory Determination Period

13 weeks – 25th March 2019.

Site Details

The site is a corner plot at the junction of St Albans Road and Bedford Road in Babbacombe, close to Babbacombe Downs, which holds a three-storey flat roofed hotel. The existing building is a heavily extended pair of semi-detached Victorian buildings, which is set back in the plot with extensive hardstanding to the front. The building is rendered with white modern casement windows under a flat felt roof, and hence it displays little external evidence of period character. There are three vehicular access points that interrupt a low stone boundary wall that otherwise sweeps around the plots dual frontage.

In terms of context the site sits within a Critical Drainage Area. It sits outside the Babbacombe Downs Core Tourism Investment Area which is focussed on the linear frontage along the Downs itself, and outside of the inland boundary of the

Babbacombe Downs Conservation Area.

In terms of its location the site sits close to a Local Centre (Reddenhill Road) that lies approximately 150m to the south-east and is close to a larger District Centre (St Marychurch) that lies approximately 400m to the north-west. It is also close to the Babbacombe Road which is a main distributor Road and bus route.

In terms of local character the building is in the area with a largely mixed residential and holiday character. The buildings in the area are largely Victorian with building forms that vary from tight terraces to large villas. There are also a number of redeveloped plots in the locality that hold more modern buildings, which are often on quite large footprints and between 3-4 storeys in scale.

Date of Officer Site Visit: 16.01.2019.

Detailed Proposals

The proposal is to demolish the existing building and redevelop the plot to provide 12 apartments and 2 houses. These are to be provided on an L-shaped footprint that addresses the two adjacent streets, with the frontages loosely aligned with the adjacent building lines. The dwellings have one parking space each to the front and the apartments have small landscaped gardens to the front. The parking for the apartments is maintained to the rear of the building within a courtyard.

The 12 apartments are provided over four floors within a white rendered building with grey windows and doors under a flat parapet enclosed roof. The upper floor apartments have cantilevered balconies enclosed with glass and the ground floor apartments have terraces that lead to designated gardens to the front. 12 parking spaces are provided to the rear within a courtyard together with cycle storage and waste storage. Each apartment would provide 2 bedrooms.

The 2 houses book-end the apartment building and are a storey lower with three floors of accommodation. The houses have a rendered finish to the front and back with copper cladding to the side and roof. These dwellings have 1 parking space each provided to the front of each unit. There are small gardens for each unit along with a balcony at first floor. Windows and doors are grey. Each dwelling has 4 bedrooms.

Through revised plans, the apartment building has pedestrian access points at both the front and the rear.

The stone boundary wall is to be retained and reinstated where the existing central vehicular entrance is removed.

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")

Material Considerations

- Referendum version of the Torquay Neighbourhood Plan*
- 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.

*The Torquay Neighbourhood Plan has recently completed its Independent Examination. Full Council resolved in November 2018 that the Plan should proceed to Referendum. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post examination neighbourhood plan.

Summary Of Consultation Responses

Interim Heritage advice:

The original pair of buildings are evidently of some age however they have been altered significantly over years to an extent whereby it is now very hard to read the original buildings. The buildings have not been identified as being of any particular value in the Babbacombe Conservation Area Appraisal and are excluded from the Conservation Area boundary. The key consideration in terms of designated heritage assets is the impact upon the setting of the Conservation Area.

The proposed scheme has a good design logic and turns the street corner in a traditional manner. Whilst it is a modern building it is evident from the design statement that the design in terms of a response to the context has been carefully considered.

It is considered that the existing building could reasonably be regarded as a negative contributor to the setting of the Conservation Area, and whilst the proposed building is of a larger height it is arguably a better response to the townscape in this locality and as such overall neutral in terms of impact on the Conservation Area's setting.

Strategic Planning Team (incorporating Highway Authority comments):

The parking standards do not meet with Local Plan Policy TA3 (Appendix F) in which 2 car parking spaces and covered, secure cycle storage (2 spaces) would be provided for each of the proposed the town houses. Electrical car charging facilities should also be provided. Policy TA3 (Appendix F) seeks one car parking space per unit with a dedicated disabled space and electrical car charging facilities plus visitor parking. The proposal provides 12 car and cycle storage spaces (1:1 ratio) with an additional 4 cycle visitor spaces but no car parking provision for visitors or electrical car charging facilities.

As the development is expected to result in an increase in parking pressure in an area where demand is already very high mitigation works should be secured to try and mitigate the impact. Currently there is a summer restriction on St Albans Road which would need to be strengthened to all year to ensure there were no adverse parking impacts arising from the additional demand. Bedford Road is likely to experience similar issues of increased demand and parking arrangements close to the junction where an existing access will be blocked up will need resolving.

An amendment to the local Road Traffic Order would cost £3,000 and this should be secured to limit the impact of the development.

Drainage Engineer:

The application identifies that infiltration drainage will not be feasible at this development and is therefore proposing to discharge surface water run-off from the site at a controlled discharge rate to the combined sewer system. The proposed discharge rate of 1.5l/sec complies with the requirements of the Torbay Critical Drainage Area.

The only hydraulic calculations that have been submitted are for the design of the attenuation tank. There are no hydraulic calculations for the surface water drainage system discharging to or from the attenuation tank. These are required to confirm that there is no risk of flooding to properties on the site or any increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change.

It is recommended that before planning permission is granted the applicant must supply details and designs for the entire surface water drainage system for this development.

South West Water:

South West Water has no objection subject to the stated controlled discharge rate being achieved.

It is noted that a public sewer lies within the site and that no buildings will be permitted within 3 metres of it.

Police Designing out Crime Officer:

No particular concerns with regard to the design and layout of the proposed scheme. Previous comments included that the balance of parking against accommodation should be considered whether sufficient as with many new developments the subject matter of parking can be a contentious issue.

Community Safety Team:

No objection subject to a condition requiring the submission and approval of construction management plan in order to control the impact of the construction phase on adjacent occupiers.

Affordable Housing Team:

The scheme does not require affordable housing due to its scale.

Waste Team

Guidance detailing requirements for waste and recycling facilities at new or converted properties in Torbay applies. This includes guidance on the distance from the public highway to the storage point, which is 25m.

This includes the capacity of waste and recycling containers required and details with regard to collection. It would also be necessary for the developer to ensure that enough space was available in the bin store for food waste containers.

Tree and Landscape Officer

There is limited potential for landscaping but a landscape condition should be attached to ensure adequate treatment of the frontage of the development.

Summary Of Representations

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement

37 representations have been received, all objecting to the scheme.

Key issues raised include:

Parking pressure
Access impacts on emergency and larger vehicles
Overlooking (towards Homecombe House)
Loss of light (towards Homecombe House)
Overdevelopment
Too close to St Albans Road / visual impact
Impact of construction on traffic flow and parking

Relevant Planning History

Pre-Planning Enquiries:

DE/2018/0079: 14 apartments with 14 car parking spaces within a 4-5 storey building – Split decision.

Planning Applications:

P/2004/2072: 14 Apartments Associated External Works and Vehicular/ Pedestrian Access (As revised by plans received 24/1/2005). Refusal by Committee for the following reasons:

01. The loss of Hotel, which is situated in a prominent position within the Babbacombe Downs Principal Holiday Accommodation Area, would adversely affect the tourist character of the area, contrary to Policies TUS and TU6 of the Adopted Torbay Local Plan 1995-2011, and advice in PPG12 "Tourism".

02. In the absence of any Unilateral Undertaking/Section 106 Legal Agreement in respect of education contributions, the Local Planning Authority has no surety of achieving adequate provision in respect of this issue and would therefore be contrary to Policy CF7 of the approved Torbay Local Plan (1995-2011).

Key Issues/Material Considerations

The main issues for consideration relate to the principle of development, its visual impact, the quality of accommodation provided and impact on neighbours, highway and parking issues, flood risk, and ecology. These will be discussed below.

1. Principle of residential development

There are two points of principle, that of residential use and that of the loss of the hotel.

In terms of the principle of a residential use Policy H1 of the Torbay Local Plan states that proposals for new homes within the built-up area (as is the case in this instance), will be supported subject to consistency with other policies in the Local Plan. In terms of the emerging referendum version of Torquay Neighbourhood Plan Policy TS4 (Support for Brownfield and Greenfield development) states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in this plan. In light of the broad aspirations of Policies H1 and TS4 the principle of residential use on the site is considered acceptable, subject to broader policy considerations. It is noted that the site is well located in a sustainable location that has good access to shops and other services, transport links and recreational areas, within an area that already has a residential character, which support the principle of a residential

use being acceptable.

In terms of the principle of the loss of the hotel, as the site is located outside the nearby Core Tourism Investment Area, Policy TO2 (Change of use of tourism accommodation and facilities) of the Local Plan applies. The policy states that the change of use of holiday accommodation or facilities outside Core Tourism Investment Areas will be permitted where:

1. The holiday character of the area and range of facilities and accommodation are not undermined; and

2. One or more of the following apply: the site is of limited significance in terms of its holiday setting, views and relationship with tourism facilities; or it can be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes, or; the redevelopment or change of use will bring regeneration or other benefits that outweigh the loss of holiday accommodation or facilities.

It is considered that the proposed loss of the hotel would not significantly undermine the holiday character of the area or the range of holiday facilities, and its current significance is limited due to its scale, its relatively poor appearance, and its location away from the main frontage of the Downs. In terms of the emerging Torquay Neighbourhood Plan Policy TT1 (Change of use constraints within and outside a CTIA) states that outside of CTIAs the change of use to residential dwellings from tourism properties will be supported subject to the site being of limited significance to the tourism setting (typically 10 letting rooms or less of serviced holiday accommodation), or there is a lack of viability for tourism (including that it can be demonstrated that the current business has been marketed on realistic terms for 12 months without sale), or at least half of the units within the property are already of Class 3 residential status. As outlined above the hotel is considered of limited significance due to its scale, location and visual appeal.

For the reasons above the principle is considered acceptable as in strategic terms a residential use of the site is supported in accordance with the aspirations of Policies SS1, SS11 and SS12 of the Torbay Local Plan.

The merit of the scheme is considered to therefore hinge on whether the extent and form of development is appropriate when considering broader policy aspirations of the Local Plan, national guidance, the emerging Torquay Neighbourhood Plan, and other material considerations.

2. Design and visual impact, including the impact upon the setting of the adjacent Babbacombe Downs Conservation Area

The site is located in a prominent roadside position adjacent to (but outside) the inland boundary of the Babbacombe Downs Conservation Area. Policy SS10

(Conservation and the historic environment) of the Torbay Local Plan states that all heritage assets should be conserved, proportionate to their importance. In this instance it is important to consider whether the scale and form of the proposed buildings would sit comfortably in its surrounds and would not adversely affect the setting of the Conservation Area. In addition to Policy SS10 Policy DE1 (Design) states that development should be well designed, respecting and enhancing Torbay's special qualities and the character of the natural built environment including areas and building of historic interest.

The local character is varied with the neighbouring streets providing a mix of tight knit terraces and large villas from the Victorian period. In addition there are some relatively substantial and heavily extended hotel buildings and some relatively large residential buildings resulting from redevelopment schemes from the last 40-50 years. As a result although the prevailing building heights are characteristically 2 storeys the local building forms vary from 2-4 storeys. Although the building will be approximately half a storey higher than the current 3-storey building, and noticeably closer to the front edge of the plot, which will present a much more imposing building on the corner, the scale is not so uncharacteristic in order to warrant concern. In terms of how it sits locally the impact of the height of the development is muted by the provision of the townhouses at either end, which at a lower three storey height begin to bridge the gap to the lower building forms adjacent.

In terms of the building arrangement the development has referenced the building lines of the two adjacent streets to present an L-Shaped corner building. Although this differs from how the current building addresses the corner the rationale is a relatively traditional and well-founded treatment and is considered a suitable design response.

In terms of the building form the development is clearly modern but it is considered to be suitably reflective in terms of how it relates to the context of the predominant Victorian buildings vernacular. The building lines are staggered to provide echoes of the period bay detailing, and the overriding balance of wall to window (solid-to-void) captures the essence of the Victorian form of buildings. The flat roof is not overly reflective of the local character but has its benefits in terms of limiting the bulk and height of the building. The townhouses display a more contemporary look with modern materials. The changing form does help break down the mass of the building, and will some visual interest. In such a locality a fresh approach to design is not a substantive concern.

In terms of the setting of the building pre-application concerns on excessive frontage parking has been positively resolved and the proposal will maintain and enhance the current stone boundary wall and provide a moderate but still positive landscape setting to the front. The proposal removes the clearly harmful extensive swathe of hardstand that is currently a negative element on the streetscene.

When taken as a whole the removal of an unattractive building and prominent hard car park setting is welcomed, and the proposal as it stands is largely well resolved in terms of its design. It is accepted that the proposed building will be more significant on the corner due to its building lines and slight increase in height, however the scale is not significantly out of context in order for there to be a substantive concern in terms of its visual impact. The limited harm does need to be weighed against the benefits of the scheme, which include the removal of the current building and car park, along with the supply of housing, temporary jobs and household spend in the area.

Due to the restricted nature of the plot and the proposal's prominence in the locality it is recommended that conditions include the approval of external materials, key design elements of the build, and that certain forms of "Permitted Development" are removed in order to secure an acceptable form of development.

As such, for the reasons above, the proposal is considered to be in accordance with Policies DE1 and SS10 of the Local Plan, and the guidance contained in the NPPF. The development is also considered largely compliant to Policy TH8 - Established architecture of the Referendum Version of the Torquay Neighbourhood Plan, which seeks that development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

3. Amenity

Policy DE3 (Development amenity) of the Torbay Local Plan details that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.

In respect of future occupiers the internal living spaces are suitably scaled and accord with the minimum space standards outlined within Policy DE3. The units also all benefit from adequate outlook and will receive adequate levels of natural lighting to key living spaces. In regard to outdoor amenity space the apartments at ground floor level will benefit from small terraces and some assigned garden space to the front of the building. This will provide outdoor spaces that accord with the expectations outlined within Policy DE3 where apartments should, where possible, be afforded 10sqm of outdoor space either privately or as part of a larger communal offering. The upper floor apartments will however fall below the desired 10sqm as each apartment is served only by a single balcony of around 5sqm. Similarly the two townhouses are to be provided with outdoor amenity space below the desired level of 55sqm for houses, with usable private gardens of 20sqm and 28sqm, and a small balcony each. However when considering the development sits within 50m of Babbacombe Downs, which is a well maintained and highly valued public greenspace, it is considered reasonable to accept some flexibility in terms of the outdoor amenity space standards, as future occupiers will be afforded

some outdoor space and will have a high quality public space almost immediately adjacent to them. In terms of the broader residential elements, the occupiers will be provided with on-site parking, and designated cycle storage and waste storage for the apartments. These facilities complete what is considered an adequate residential environment for future occupiers.

In respect of neighbouring amenity, the immediate occupiers to either side of the plot are likely to see an improvement in terms of amenity. The current building is set to the rear of the plot which presents a large building mass in close proximity, which also has a number of upper floor windows with views across into the neighbouring plots. The removal of the current building will improve outlook and access to natural light, and also improve privacy for these occupiers. In its place the development will present a building mass to the front of the plot, which will be less impacting on these immediate neighbours, and there will be no openings on the side elevations of the townhouses, which will protect privacy.

The rear elevations of the development will present some overlooking of plots but the impact will be less than the current situation due to the distances involved. Officers feel that there is an improved relationship for these neighbours. More widely, the impact across the public frontages is considered limited in terms of amenity. Across Bedford Road the Morningside Hotel presents some windows within its side/rear elevation, however the arrangement is not considered any more harmful than what is already experienced within the wider street. With the slight recess of the building line the distance across the street is actually slightly greater than what is found adjacent.

Across St Albans Road sits Homecombe House, a large complex of retirement flats. Concern is expressed in representations about the potential impacts upon privacy from overlooking, and from loss of light, from the development. The proposed development will present a building separation, across a public road of approximately 27m. This distance is considered more than sufficient to maintain adequate levels of amenity. The perceived level of overlooking will hopefully be diminished by the fact that Homecombe House presents a tree-lined border with St Albans Road, which will help screen the development from occupiers. Given its siting, scale, and design, it is considered that the proposed development would have an acceptable impact on the amenities of neighbouring occupiers.

Due to the restricted nature of the plot and the proposed layout it is recommended that conditions include no use of flat roofs for recreational purposes in order to limit potential overlooking and that "Permitted Development" for the two houses to extend or build outbuildings is removed in order to secure an acceptable form of development for future occupiers by ensuring that the limited amenity space is not unduly reduced further.

To conclude, the proposed residential environment would appear adequate and the development would not unduly impact the level of amenity afforded

neighbouring occupiers, which presents development that accords with Policies DE1 and DE3 of the Torbay Local Plan.

4. Highways, Movement and Parking

The development proposes 12 apartments with 12 parking spaces within a rear parking courtyard, and 2 houses each with one parking space to the front of each dwelling.

Policy TA3 and Appendix F of the Torbay Local Plan provides key policy guidance for residential developments. Houses have an expected requirement of 2 spaces per dwelling and apartments have an expectation of 1 space each, with some degree of visitor parking. There is also an appreciation that these standards can be reduced in more accessible and well-connected locations such as town centres. There is further advice on the provision of disabled parking and electric charging points.

The level of parking does not meet the parking expectations as the dwellings do not benefit from 2 parking spaces, and there are no visitor spaces to support the apartment block. Although the expected level of visitor parking is not defined within the Local Plan for the scale of development proposed 2-3 visitor spaces would appear a reasonable provision.

As the site is constrained there is no obvious solution to increase the level of parking to a policy compliant position. The frontage is largely free of parking, as recommended through pre-application discussions, and the reintroduction of parking in such a location would present demonstrable visual harm and would also be likely to result in access issues when considering the current street parking. In the absence of an obvious solution the local context should be considered in order to determine the acceptability of the proposal on highway grounds.

In terms of the local context, although it is not a town centre site, it is located within easy access of 2 shopping areas (one Local Centre and one District Centre) and is adjacent to Babbacombe Road, which is a major distributor road and bus route. This weighs in favour of accepting some flexibility in terms of parking provision. However, as the site is in a mixed residential and holiday area, where some streets are formed with terraces with little parking, there is clearly already a high demand for street parking in the area. This does not weigh in favour of accepting flexibility in terms of parking provision. Highway colleagues have raised the lack of a policy compliant parking provision as a concern in this location.

Having assessed the site and surroundings it is considered that the impact of additional parking pressure from the slight shortfall in a policy compliant position could largely be mitigated by alterations to the parking restrictions in the area. It is principally proposed that the seasonal parking restriction on St Albans Road should be amended to a year-round restriction, and that the parking arrangement

around the junction with Bedford Road should be reconsidered where a current access is to be blocked up. This mitigation could be secured by a payment of £3000 to fund Road Traffic Order amendments. It is noted that the Police have raised a concern on the level of parking.

In order to secure an acceptable form of development conditions are proposed to secure the provision and retention of parking facilities prior to first occupation and the provision of the communal cycle store.

With due regard of design constraints and likely visual impact of additional parking, and considering the concerns raised by the Highway Authority and the Police Designing Out Crime Officer, the proposed level of parking, which provides some form (1:1) of designated on-plot parking for all residences, is considered acceptable on highway safety and movement grounds, subject to securing the mitigation outlined above to ameliorate the likely impact on street parking demand in the area post-development. If secured the proposal is considered suitable for approval when considering the aims and objectives of Policies DE1, DE3, TA2 and TA3 of the Torbay Local Plan.

The above consideration has been made with due regard for the guidance outlined within the NPPF, which guides (Para 109) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5. Drainage and flood risk

As Torbay is within a Critical Drainage Area the application needs to demonstrate that the surface water drainage design would not result in any increased risk of flooding to properties or land adjacent (for the critical 1 in 100 year storm event plus 40% for climate change) and the Local Plan Policy outlines a hierarchy.

It is accepted that infiltration drainage will not be feasible. In such a circumstance attenuated and controlled discharge into the Public Sewer is an acceptable concept to follow. However the developer has failed to show that a discharge to the Public Sewer can be achieved without increase to the risk of flooding to land or buildings adjacent. Certainty is required on this prior to the grant of consent.

It is noted that South west Water has no objection subject to the discharge being attenuated to a rate to be agreed and that buildings are not located within 3m of a Public Sewer.

Subject to the receipt of the additional design detail requested that shows that surface water can be attenuated and discharged at an acceptable rate the proposal is considered compliant with Policies ER1 and ER2 of the Torbay Local Plan. These details should be secured prior to the grant of planning permission.

6. Ecology

There are no major ecological constraints.

Although the site has the potential to support nesting birds no evidence was found and in terms of bats the site has a low roosting potential.

The accompanying ecology assessment proposes only precautionary measures are necessary to afford due diligence for protected species. It is recommended that ecology impacts can be duly managed by way of planning conditions in-line with the recommendations of the submitted ecology report.

Although there is little potential for enhancement of this urban development in relation to biodiversity, the inclusion of integrated habitat for birds, bats and bees could be considered by way of condition to support the NPPF guidelines to achieve biodiversity enhancement.

As there appears no constraint and with opportunity to respond to policy aspirations by way of detailed design elements the scheme accords with Policies NC1 of the Torbay Local Plan.

7. Other Considerations

5 year housing supply

The Council has between around 3.8- 4.5 years' housing supply based on an assessment completed in December 2018.

Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay, or the granting of permission where there are no relevant development plan policies or where the most important policies are out-of-date. A lack of a demonstrable 5 year housing supply principally renders the most relevant policies of an otherwise up-to-date development plan out-of-date.

In such circumstances, permission can only be refused (according to the NPPF) according to two tests-

- 1) There are specific policies in the NPPF that provide a clear reason for refusal, or
- 2) The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (when assessed against the Framework as a whole)

This presumption in favour of development is often referred to as the 'tilted balance'.

It must be remembered that whilst the NPPF is a material consideration, it has no power to supersede an adopted development plan. However it does set out clearly that decision makers must give significant weight to housing supply considerations.

The benefits of the scheme are relevant as a material consideration and the provision of 14 homes would in some way help address the lack of a 5 year housing supply and the public benefit of this should be afforded due weight in the decision making process.

Torquay Neighbourhood Plan

The Torquay Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application.

The proposal has been considered aside the relevant policies and is largely considered compliant with the policy aspirations of the post examination version of the Torquay Neighbourhood Plan. It should be noted that, prior to its formal adoption following a positive referendum result, the weight to be afforded to the Neighbourhood Plan is less than that to be afforded to the adopted Local Plan.

S106/CIL and Affordable Housing -

Affordable Housing:

Affordable housing provision/contribution is not required from this development in accordance with Policy H2 of the Torbay Local Plan 2012-2030 as for a scheme of 14 dwellings within a brownfield context Local plan Policy H2 affordable housing is not required

S106:

Sustainable Development Obligations:

Sustainable Development S106 contributions are not required from this development in accordance with Policy SS5/SS6/SS7/SS9/SS11/H2/Planning Contribution and Affordable Housing SPD.

Site Acceptability Measures:

Highway works: Amendment to the local Road Traffic Order, at a cost of £3,000,

should be secured to limit the impact of the development, in-line with Policy DE1, DE3 and TA3 of the Torbay Local Plan and Planning Contribution and Affordable Housing SPD.

CIL:

The application is for residential development in Zone 2 where the Community Infrastructure Levy (CIL) is £70 per square metre of additional gross internal floor area created.

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.

HRA:

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC. The proposed development is unlikely to have a significant effect on the South Hams SAC.

The development is not immediately adjacent to the undeveloped coast and the proposal is unlikely to have a significant effect on the Lyme Bay and Torbay SAC.

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.

Proactive Working

In accordance with paragraph 38 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. The applicant has broadly responded to concerns raised at pre-app stage and has provided improved cycle storage, a front entrance, and additional detail on access levels during the course of the application.

Conclusions

Subject to resolving outstanding matters in terms of the drainage design and site acceptability highway mitigation (to secure amendments to existing Road Traffic Orders), the scheme is considered acceptable for the reasons outlined within this report.

In line with the NPPF proposals that accord with an up-to-date development plan should be approved without delay.

The acceptability of the scheme is considered to be strengthened by the Council's current lack of a demonstrable 5 year housing supply. In such circumstances the NPPF guides that permission can only be refused (according to the NPPF) according to two tests-

- 1) There are specific policies in the NPPF that provide a clear reason for refusal, or
- 2) The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (when assessed against the Framework as a whole).

Should the outstanding matters be resolved, any adverse impacts are considered minor and would not demonstrably outweigh the benefits of the proposal, which include helping meet a housing need, construction jobs and the broad economic support for local business from future household spend. It is recommended that planning permission be granted subject to the completion of a legal agreement and the conditions outlined below.

Condition(s)/Reason(s)

CMS

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 of the Adopted Torbay Local Plan 2012-2030

Landscaping

No development (excluding demolition) shall take place until details of all proposed hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within six months of the development being brought into use, and shall be retained for the life of the development.

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

Ecology recommendation 1

All demolition and/or the removal of vegetation shall be undertaken outside of the bird nesting season (March-September inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds. If nests are found no works shall be undertaken until the birds have fledged, in-line with the submitted Bat and Protected Species Survey (Eco Logic: October 2018)

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

Ecology recommendation 2

Prior to demotion contractors will be made aware of the potential for roosting bats in-line with the submitted Bat and Protected Species Survey (Eco Logic: October 2018). If during demolition roosting bats are found all associated works to the building shall immediately stop and a suitably qualified ecologist shall be contacted for further advice.

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

Ecology recommendation 3

Prior to first occupation 2 bat boxes, 2 nesting terraces, and 2 bee bricks shall be implemented within the build in-line with the submitted Bat and Protected Species Survey (Eco Logic: October 2018)

Reason: To secure biodiversity enhancements in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the NPPF.

Parking provision

The dwellings and apartments hereby approved shall not be occupied or brought into use until the parking spaces and manoeuvring areas as approved have been provided. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030.

Materials

Prior to the commencement of development above damp proof course level (excluding demolition) samples of all external materials (either digital or physical) 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: In the interest of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

Boundary Treatment

Prior to the commencement of development above damp proof course level (excluding demolition) details of all boundary treatments and means of enclosures, including all retaining structures, 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: In the interest of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

Cycle provision

Prior to the first occupation of the apartment building hereby permitted the cycle store, as detailed within the approved plans, shall be completed and made available for the purpose of cycle storage to serve the development. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Adopted Torbay Local Plan 2012-2030.

Waste provision

Prior to the first occupation of the apartment building hereby permitted the waste and recycling storage facility, as detailed within the approved plans, shall be completed and made available for the purposes of waste storage to serve the development. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and W1 of the Adopted Torbay Local Plan 2012-2030.

Drainage

The development shall not be occupied until the surface water drainage system detailed on plans hereby approved has been completed in accordance with the submitted plans. The surface water drainage system as detailed on these plans shall then be continually maintained thereafter.

Reason: As Torbay is designated as a Critical Drainage Area and to ensure that the development does not increase flood risk elsewhere in accordance with policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

S278

Prior the commencement of development above damp proof course level (excluding demolition) a S278 Agreement, or other appropriate highway licence agreement, to secure works to raise the kerb adjacent to the closed entrance prior to the first occupation of the development and secure necessary access points as shown on the plans hereby approved, shall be secured. The development shall proceed in full accordance with the agreement(s).

Reason: To secure the necessary works to the highway and a satisfactory form of development, on accordance with Policies DE1, TA2 and TA3 of the Adopted

Torbay Local Plan 2012-2030.

PD

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015 (or any Order revoking or revising that Order) the following forms of development are not permitted, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority;

- No additional means of enclosures,
- No additional hardstandings,
- No additional extensions or outbuildings.

Reasons: In order to protect visual amenity and the amenity of future occupiers by maintaining a satisfactory form of development and outdoor amenity spaces within a restricted site, in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

Detailed design

Prior to the commencement of development above damp proof course level (excluding demolition) details of reveals, fascias, parapets, cills, windows, doors and balconies shall be submitted to and approved in writing by the Local Planning Authority.

Reasons: In order to protect visual amenity in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

Relevant Policies

SS1 - Growth Strategy for a prosperous Torbay
SS3 - Presumption in favour of sustainable dev
SS8 - Natural Environment
SS10 - Conservation and Historic Environment
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
TA2 - Development access
TA3 - Parking requirements
C4 - Trees, hedgerows and natural landscape
H1LFS - Applications for new homes_
DE1 - Design
DE3 - Development Amenity
ER1 - Flood Risk
ER2 - Water Management
W1 - Waste management facilities

NC1 – Biodiversity and geodiversity