

**Application Number**

P/2014/1182

**Site Address**

La Rosaire  
Livermead Hill  
Torquay  
Devon  
TQ2 6QX

**Case Officer**

Mr Scott Jones

**Ward**

Cockington With Chelston

**Description**

Demolition of existing building and construction of 8 new apartments

**Executive Summary/Key Outcomes**

This application, for the demolition and redevelopment to provide 8 flats, was previously considered at the DMC meeting 16.03.2015. The report is attached as Appendix 1.

The proposal was previously resolved as follows:

*Conditional approval subject to:*

- i) Achieving appropriate planning obligations as considered necessary;
- ii) The submission of an ecological survey that is to the satisfaction of the Director of Place;

The following additional conditions to be added to those set out in the submitted report:

- iii) The siting of three bat boxes and two bird boxes; and
- iv) An ecological consultant being consulted immediately should bats be encountered during construction.

The purpose of this report and the return of the scheme for consideration is to review the S106 contributions in relation to greenspace and recreation and sustainable transport, in light of the change in guidance from central government and a request to review the requirements by the applicant.

**Recommendation**

Conditional approval as previously determined by the committee, with revised S106 contributions of £350 towards waste and £1500 for a traffic regulation order.

**Site Details**

The site sits on the junction of Livermead Hill and Cockington Lane, overlooking Torbay Road, and currently contains a relatively distinctive semi-detached

property known as La Rosaire.

### **Detailed Proposals**

This application proposes the demolition of the existing building and replacement with a 3 storey apartment building providing 8 units with a lower ground floor entrance and under-croft parking.

### **Summary Of Consultation Responses**

*Council's Legal Officer* - The requirement for waste and recycling obligations to pay for the necessary bins remains necessary, directly related, and fair and reasonable in scale. This obligation should remain.

The requirement for the applicant to provide obligations to pay for the Traffic Regulation Order to move the existing taxi rank in order to accommodate the new entrance is considered necessary, directly related and fair and reasonable and should remain.

The requirement for the proposal to pay £12,620.00 to fund improvements to the lighting at Corbyn Head does not meet the relevant tests and is not aligned with the recent government guidance on planning obligations for schemes of less than 10 units. The obligation should no longer be sought.

The requirement for the proposal to pay £17,170.00 to fund walking and cycling improvements between the site and Cockington Village does not meet the relevant tests and is not aligned with the recent government guidance on planning obligations for schemes of less than 10 units. The obligation should no longer be sought.

### **Summary Of Representations**

The application has not been re-advertised and no new representations have been received.

The applicant's letter citing why they consider the obligations unnecessary has been copied for members.

### **Relevant Planning History**

N/A.

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

The main issue is the removal of the requirement for greenspace/recreation and sustainable transport contributions in light of the changes to government guidance in relation to schemes of 10 units or less.

Sustainable transport and greenspace contributions in light of the changes to government guidance for apartments

Revised guidance from DCLG is that 'tariff style' contributions should not be sought from 'small scale' developments of 10 units or less which have a maximum combined gross floor space of less than 1000m2.

It is also necessary for the request to meet the following tests as defined in the Community Infrastructure Levy 2010 and the NPPF. These are that they are necessary to make the development acceptable in planning terms; they are directly related to the development and are fairly and reasonably related in scale and kind to the development.

Appeal decisions increasingly support the DCLG position which means we have to be rigorous about the requests for contributions and to be sure that they meet the relevant tests. Failure to do this could result in costs against the Council if we are unable to defend our position at appeal.

The works required by Highways to relocate the taxi rank via a Traffic Regulation Order (estimate £1,500) is necessary to make the development acceptable in planning terms.

The waste contribution (£350) to provide bins is directly related to the development.

A Greenspace contribution was sought in the original report in order to provide works to the lights at Corbyn Head. The improvements to the lights are not considered necessary in order to make the proposal acceptable on planning merit and are not directly related to the development. The payment of an improvement that will be a public benefit is disproportionate and hence would not be fairly and reasonably related in scale.

The contributions towards a pedestrian and cycle route towards Cockington Village is also difficult to justify. Similarly the improvement works are not necessary to make the development acceptable on planning merit, unlike the clearly necessary TRO works. Also the generic improvement of a route in the vicinity of the land is not directly related and the payment of the improvement that will be a public benefit is disproportionate and hence would not be fairly and reasonably related in scale.

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

The previous S106 detail is as follows:

#### 1. Sustainable Development Contributions:

Based on supply of 5 units 75-94m2, 2 units 95-119m2 and 1 unit +120m2, with mitigation for the current building, 1 unit at +120m2

Waste Management	£ 350
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Sustainable Transport	£17,170
Greenspace and Recreation	£12,620

## 2. Highway Contribution:

Traffic Regulation Order Works: £1,500 (cost quote from the Highway Authority).

It is considered that in order to comply with current guidance the proposed S106 agreement should omit the sustainable transport and greenspace obligation.

It remains appropriate to seek contributions for waste management and for a traffic regulation order as these are directly related to the development.

### **Conclusions**

Following advice from the Council's legal officer and the rise in appeal decisions, which are clarifying that contributions on smaller schemes should only be sought in clearly defined circumstances to comply with recent DCLG guidance, the greenspace and transport obligations (apart from the contribution of £1500 towards a traffic regulation order) are not considered to meet the tests for obligations.

## **APPENDIX 1 – Original Committee Report**

### **Executive Summary/Key Outcomes**

*The application is to demolish the existing dwelling and construct a three-storey building that would provide 8 apartments with 12 parking spaces.*

*The existing property is a relatively distinctive two-storey building with a three-storey corner tower feature. The plot is in a prominent location on the junction of Livermead Hill and Cockington Lane, overlooking the busy Torbay Road coastal route.*

*The scale and modern form of the proposed building is considered acceptable in the context. The design approach sits comfortably with the adjacent modern buildings. The height is aligned with the adjacent property/s, with only the feature corner element that would break the prevailing ridge line. The size of the plot is considered sufficient to comfortably accept the additional width proposed.*

*In terms of residential amenity the scheme retains acceptable living conditions for the occupants of adjacent properties. The proposed building lines and screening will not unduly affect the amenity of the residents of the attached property Oversands and there are no other residential plots in the locality that are likely to be affected due to the distances involved.*

*Parking is proposed at a ratio of 1:1 for the 8 flats with 4 additional visitor spaces. 7 spaces are provided in an under-croft, which also provides for safe and secure covered cycle parking. The level of parking is considered acceptable.*

*As the proposal increases the number of dwellings on the site developer contributions may be required to off-set the impact upon social and physical infrastructure if there are identified schemes in the locality. The agent has confirmed that the applicant is willing to pay the necessary obligations prior to the grant of permission.*

### **Recommendation**

*Conditional approval; with conditions to include those laid out within this report; subject to (i) achieving appropriate planning obligations as considered necessary and (ii) the outcome of the pending ecological survey supporting the proposed redevelopment.*

### **Site Details**

*The site sits on the junction of Livermead Hill and Cockington Lane, overlooking Torbay Road, and currently contains a relatively distinctive semi-detached property known as La Rosaire.*

*It adjoins a property known as Oversands, which is a relatively new modern-styled building that mixes render, expansive sections of glazing and cladding, all under a low-lying roof. To the other side of Oversands there is another modern styled building currently under construction, which will be flat-roofed with rendered elevations, extensive glazing and balconies.*

*In terms of plot layout the building sits in the southern part of the site and faces east towards the sea. The majority of the garden space is to the side (north) of the building with the land dropping gently towards Cockington Lane. Vehicular access is presently off Livermead Hill.*

*The site is within a Principal Holiday Accommodation Area and the train line to the rear is designated as a Wildlife Corridor. There is a linear flood risk zone adjacent to the site along Cockington Lane.*

### **Detailed Proposals**

*This application proposes the demolition of the existing building and replacement with a 3 storey apartment building with a lower ground floor entrance and under-croft parking.*

*The building has a modern contemporary look, with rendered elevations punctuated with areas of metal cladding, plank boarding and prominent areas of glazing. The bulk of the roof would comprise a low-lying, dual-pitched structure finished in seamed aluminium, aside an area of flat-roofing.*

*Elevations are broken up by subtle changes in building lines and the mixing of materials.*

*Balconies are offered within the elevations through a mix of recessed and suspended structures enclosed with glass. The corner of the building is emphasised by a largely glazed tower with architectural detailing.*

*Internally the lower ground floor and under-croft offers 7 covered car parking spaces and covered cycle storage. The ground floor offers 3 flats (79m<sup>2</sup>, 80m<sup>2</sup> and 95m<sup>2</sup>), the first floor 3 flats (79m<sup>2</sup>, 88m<sup>2</sup> and 95m<sup>2</sup>), and the second floor 2 flats (85m<sup>2</sup> and 151m<sup>2</sup>).*

*Vehicular access is moved from Livermead Hill to Cockington Lane via a recessed gated entrance that leads to 5 external car parking spaces and a defined waste storage area and the under-croft where 7 further parking spaces and cycle parking is provided.*

### **Summary Of Consultation Responses**

*Torbay Design Review Panel comments - Historical but relevant comments date from late 2012 where the panel reviewed two options. The proposal under consideration is comparable to the Option 1 favoured by the panel and considered the one most likely of success. General comments about the scheme included;*

- *The approach to the height and massing was perfectly satisfactory*
- *The North East elevation was good*
- *Support given to the idea of raising the height of the corner*
- *The landscape design was under-developed and needed exploring more*
- *The use of glazing should be carefully thought out to achieve a balance towards heat losses and gains, with potential more natural shading techniques utilised in the design.*

*The full comments of the DRP and detail of the two options has been provided in the representations pack for context.*

*Network Rail - No objection in principle. Advice given that the applicant should contact Network Rail's Asset Protection Team as early as possible within the structural design phase should planning permission be granted, as there may be a risk that the railway may be undermined by the works.*

*Highways Department - No objection in principle. Parking spaces should be a minimum of 2.4m x 4.8m with adequate manoeuvring space. The visibility splay should be within the site boundary and a continuous footway clearly demarcated across its frontage. A financial obligation should be sought to cover the costs of the Traffic Regulation Order in order to cover the cost of relocating the taxi rank*

from where the new access is proposed.

*Arboricultural Officer - Previous comments advised that no trees or significant vegetation exist within the site that would constrain development. The scheme was considered suitable for approval on arboricultural merit subject to a detailed landscape plan being submitted and approved. The arboricultural context has not changed and these comments are considered valid.*

*Drainage Department - Detailed design of the soakaways and how they have been informed through infiltration testing should be sought prior to the grant of permission in order to ensure flood risk to properties and land adjacent is not increased as a result of the development.*

*The design of the soakaways should be in accordance with BRE Digest 365 and should cater for the 1 in 100 year storm event plus an allowance for climate change.*

*South West Water - No comments supplied. Previous application comments stated that as SWW has no apparatus that would be affected by the proposal they would offer no comment or requirement to development.*

### **Summary Of Representations**

*Six representations received. The comments include:*

- *Supports the application but raises concern in regard to the flag-like pole and whether this establishes a building height for future development*
- *Concern in regard to overdevelopment*
- *The proposal is unsympathetic*
- *Visual impact and impact upon the spacious green quality*
- *Building heights going up*
- *Concern over how the proposal would be built where there is a flying freehold*

### **Relevant Planning History**

#### **Planning Applications:**

- |                    |  |
|--------------------|--|
| <i>P/2001/0395</i> | <i>Erection of four 1 bedroom holiday apartments with garages (in outline). Refused 18/5/2001.</i>   |
| <i>P/2007/1945</i> | <i>Demolition of house, formation of 8 apartment building with 22 car park spaces and vehicular access. Refused 12/3/2008.</i>   |
| <i>P/2008/1255</i> | <i>Demolition of house; formation of 8 apartment building on four floors and 12 car parking spaces and 1 space for disabled parking with vehicular access (revised scheme). Refused 16/10/2008. Appeal dismissed 06/05/2009.</i> |

- P/2009/0688      Redevelopment to form 8 apartments, 13 car parking spaces with vehicular access (second revision). Refused 13/11/2009. Appeal dismissed 01/09/2010.*
- P/2012/0972      Demolition of existing building and new build 8 apartments - Withdrawn.*
- P/2112/1225      Demolition of existing building and new build 8 apartments - Resolved approval under delegated powers following Site Review Meeting protocol raised no member requests - Subsequently withdrawn by the applicant/agent due to the inability to sign the proposal S106 Legal Agreement and achieve the necessary planning obligations.*

*Appeal Decisions:*

*The two previous appeals dismissed relate to proposals for a 4-storey building with a central glazed atrium.*

*Inspector's comments indicated that a contemporary building on this prominent corner would be appropriate.*

*The Council's concerns about the additional bulk of these schemes were not shared.*

*Concern was largely related to design, initially the poor relationship with the adjacent property in terms of un-aligned floor heights and roof pitches, and the plain form which would provide a large yet bland building in a prominent location.*

*Detail of the schemes dismissed at appeal will be included within the committee presentation for context.*

**Key Issues/Material Considerations**

*The main issues are:*

- 1.      The principle of apartments*
- 2.      Visual impact*
- 3.      The quality of the residential environment*
- 4.      Amenity impact upon neighbouring plots/occupiers*
- 5.      Highway movement and parking*
- 6.      Flood risk and drainage*
- 7.      Ecology*

*1.      The principle of apartments*

*The principle of apartments on the site is considered acceptable as it sits comfortably with the mixed residential character of the area, where both dwellings and flats/apartments sit side by side in varying building forms.*



*The location is well suited for residential use set in an urban context relatively close to employment opportunities, social and recreational infrastructure and transport links.*

*The principle of providing a larger building (and a greater number of units) on the site is generally supported in planning policy in terms of seeking to maximise the re-use of urban land, subject to other considerations.*

*Previous applications for apartments refused by the Authority in 2008 and 2009 did not cite objection to the principle of flats. The Inspector's comments in each subsequent appeal also omitted to raise the concept of flats as a concern.*

*Having considered the location and the mixed character of the area, in terms of building type and occupation, the provision of flats is considered aligned with Saved Local Plan Policies HS (Housing Strategy), H9 (Layout, design and community aspects) and H10 (Housing densities).*

## 2. Visual impact

*The scale, height and form of the building is considered acceptable in the context.*

*The height of the proposed building respects the established ridge line of the three properties on this part of Livermead Hill and is considered acceptable. To replicate the existing corner turret of La Rosaire the proposal includes a corner feature that extends above the height of the main building. This approach was endorsed by the Torbay Design Panel and the detail of the corner element is considered a successful response to the panel's desire for a bolder feature that added further 'delight' to the building.*

*The proposal would result in an increase in the size of the built form on the site. In regard to the proposed footprint the building will extend approximately 8m closer to Cockington Lane than the current building. Due to the splayed border to the north this will present a building where the front corner is approximately 11m from the edge of the plot with the lane and the rear corner 23m from the lane. The resultant gap between the building and Cockington Lane is considered sufficient in the context in order to retain a landscape setting, subject to planting detail. It is considered that by reason of the size of the application site and the context of the surrounding area that a building of the proposed scale could be satisfactorily accommodated without resulting in harm to the visual amenity of the area.*

*The front building line is pushed forward slightly however it retains an appropriate relationship and respect for the setting of the adjoining properties.*

*The rear building line is pushed back towards the boundary with the adjacent rail*

*line however the additional extent of development is not considered visually harmful in the context of big buildings and big gaps that is locally prevalent.*

*The judgement on acceptance of the scale and height of the building is considered to be aligned with comments expressed by the Planning Inspectors in previous appeals. The scale and height is aligned with Option 1 considered by the Torbay Design Panel where the panel concluded the scale and height to be perfectly satisfactory.*

*The elevation treatment has been explored and the concept is largely that submitted to and reviewed by the Torbay Design Review Panel where it was considered likely to be a success.*

*Subject to detail to ensure the quality of the layered approach and quality of the materials the scheme is considered to provide a suitable design solution for the site.*

*It is concluded that the scale, height and form proposed, subject to securing a high quality facade detail via condition, will provide a modern interesting building that would sit comfortably within the site and contribute positively to the evolving character of the locality.*

*The proposal is considered to sit comfortably with the aims of objectives in Saved Local Plan Policies BES (Built Environment Strategy), BE1 (Design of new development) and H9 (Layout design and community aspects).*

### 3. Quality of the residential environment

*The proposal will provide 8 apartments, each with 2 or 3 bedrooms, within the size range of 80m<sup>2</sup> to 150m<sup>2</sup>.*

*The scale of the units that are proposed is considered acceptable as they appear to provide good quality internal living spaces with plenty of space, good natural lighting to rooms and good outlooks.*

*Outdoor amenity space is provided in the form of terraces/balconies and a degree of garden space. The level of space is sufficient in the context of seaside apartments.*

*With consideration of the scale of the units and broad living environment the quality of the proposal in habitation terms is considered acceptable and compliant with planning policy guidance, notably the aims and objectives of Saved Local Plan Policies HS (Housing Strategy) and H9 (Layout, design and community aspects), which seek to secure good quality homes and high standards of design.*

### 4. Amenity issues

*The impact of the additional height, the revised building lines and the proposed windows and balconies within it has been considered.*

*The plot is relatively detached from neighbouring plots other than to the south where it borders with and attaches to Oversands. The impact upon the occupiers of Oversands is considered below.*

*The proposed building lines to the front and rear close to this border are similar to those of La Rosaire. It is unlikely that outlook or levels of natural lighting into rooms would be demonstrably affected by the bulk of the building that is proposed.*

*In terms of privacy the proposal seeks to provide balcony space to serve the apartments, which is similar to how Oversands has evolved. Due to the intricate relationship and building lines screening is detailed in order to protect amenity. With screening as detailed the relationship is considered acceptable as the development would retain suitable levels of privacy between properties.*

*With acceptable levels of local amenity maintained the proposal is considered compliant with the aims and objectives of Saved Local Plan Policies HS (Housing Strategy) and H9 (Layout, design and community aspects)*

#### 5. Highway and movement matters

*The proposal provides a revised access with 12 parking spaces and covered cycle storage.*

*The revised access off Cockington Lane is considered acceptable and the Highway department do not object to this. Previous highway comments advised that the access should be no less than 6m back from the highway in order to ensure that cars do not temporarily overhang the highway. This can be addressed by condition. Also related to the access the Highway Authority has identified that funding for the Traffic Regulation Order should be achieved in order to move the taxi rank demarked where the proposed entrance will sit. This can be achieved within the wider request for planning obligations and is not a constraint to the development.*

*The level of parking, which provides 1:1 parking and 4 visitor spaces is considered acceptable. The layout and size of the spaces appears to accord with guidance (spaces being a minimum 2.4m x 4.8m with 6m manoeuvring space). The scheme also provides safe and secure cycle parking in the under-croft.*

*In the context the proposal provides acceptable development in terms of parking, movement and highway issues, subject to the obligations above being achieved. The proposal is considered compliant with the aims and objectives of Saved Local Plan Policies TS (Transportation strategy), T25 (Car parking in new*

development) and T26 (Access from development on to the highway).

#### 6. Flood risk and drainage

*The building sits outside of the adjacent linear flood risk zone however it is important to secure appropriate development that does not increase rainwater run-off and thus contribute to the flooding of land or properties adjacent.*

*The proposed landscape plan details the location of new soakaways to serve the development. The Authority's Drainage Officer has requested further information in respect of detailed design and has recommended that this should be achieved prior to the grant of planning permission.*

*In this instance, as the plot is relatively large and there would appear scope to provide SUDS and/or on-site attenuation, it is considered pragmatic to seek detailed design prior to commencement via a planning condition.*

#### 7. Ecology

*The ecological implications of the proposal have been considered in terms of protected species, habitat and biodiversity.*

*With the scheme involving the removal of a relatively old building and there being a large garden that sits adjacent to a wildlife corridor, it is considered that protected species may be present.*

*Further survey work has been requested which the agent is seeking to respond to.*

*The findings of this survey work will be a material consideration. It is not considered appropriate to grant permission in the absence of this detail.*

*It is recommended that a positive committee resolution is subject to the findings of this ecological work supporting the notion of the development in the context of protected species and/or habitats.*

*This survey work and mitigation proposals if required will ensure that the proposed development would be consistent with Policies NCS (Nature conservation strategy) and NC5 (Protected species) in the saved Local Plan.*

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

*The proposal seeks to intensify the residential provision on the site from one large dwelling to 8 flats of varying sizes. In-line with Council policy planning contributions related to the scale and the nature of residential development should be sought to counter the likely impact of the development upon local infrastructure.*

1. *Sustainable Development Contributions:*

*Based on supply of 5 units 75-94m<sup>2</sup>, 2 units 95-119m<sup>2</sup> and 1 unit +120m<sup>2</sup>, with mitigation for the current building, 1 unit at +120m<sup>2</sup>*

<i>Waste Management</i>	<i>£350</i>
<i>Sustainable Transport</i>	<i>£17,170 (subject to scheme identification)</i>
<i>Greenspace and Recreation</i>	<i>£12,620 (subject to scheme identification)</i>

2. *Highway Contribution:*

*Traffic Regulation Order Works: Subject to cost quote from the Highway Authority.*

*Total for development: subject to the matters above.*

*The applicant has confirmed that they are willing to pay any necessary obligation prior to the grant of permission.*

**Conclusions**

*The proposed apartment building, which offers 8 flats, is considered to be suitably scaled within the context of the area and considering the prominence of large buildings.*

*Its form and detailed design is also considered to present a successful modern development in an area where there is an eclectic building form and mixed character.*

*The building is supported by suitable levels of ancillary facilities, such as parking, cycle provision, waste storage and amenity space.*

*On balance the scheme is considered to offer an acceptable form of residential redevelopment, subject to suitable conditions to achieve a high quality finish, achieving planning obligations to offset its direct impact upon local infrastructure, and subject to findings of the pending ecological survey work.*

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

01. *submission and approval of materials and colour palette*
02. *submission and approval of detailed design drawings for key elements of the building*
03. *submission and approval of a detailed landscape scheme*
04. *submission and approval of a sustainable urban drainage solution*
05. *submission and approval of a revised access detail that shows a gated entrance no less than 6m beyond the edge of the public highway*
06. *submission and approval of boundary wall and any other means of*

- boundary enclosure*
07. *car parking to be completed and made available prior to occupation and maintained thereafter*
  08. *cycle parking made available prior to occupation and maintained thereafter*
  09. *prior to occupation the obscure glazed screening shall be fitted and then maintained thereafter*
  10. *The flat roof shall not be used for recreational purposes and shall only be accessed for essential maintenance*
  11. *Removal of permitted development in regard to walls, fences and other means of enclosure.*

**Relevant Policies**

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