

Application Number

P/2018/0003

Site AddressEast Quay
Brixham
TQ5 8AW**Case Officer**

Miss Emily Elliott

Ward

Berry Head With Furzeham

Executive Summary/Key Outcomes

This planning application is for the erection of a refreshment kiosk on East Quay, Brixham, next to the public conveniences.

The proposal is considered to be acceptable in this location and without any overriding detriment to the character or appearance of the locality. Consequently, the proposal meets Local Plan policy requirements.

Recommendation

Approval.

Reason for Referral to Development Management Committee

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

Statutory Determination Period

8th March 2018. The applicant revised the original plans due to the concerns given by the Council's Conservation Officer and has had to submit additional flood risk information to satisfy the concerns of the Council's Drainage Engineer.

Site Details

The application relates to a small parcel of land sited on East Quay in Brixham, which comprises Grade II Listed walls and quays on all four sides of the harbour, extending from New Pier to Kings Quay, and is located within the Brixham Town Conservation Area. The application site lies in between an area of seating and the public conveniences.

Detailed Proposals

This planning application proposes the erection of a refreshment kiosk. The application was retrospective, however the kiosk has now been removed due to it being the off-peak season. It should be noted that the original submitted plans

did not reflect the built form present on East Quay and therefore the plans have been revised in line with the suggestions made by the Conservation Officer.

The kiosk would be 5 metres in width, 3 metres in depth and 3.4 metres in height with a flat roof to match the neighbouring public conveniences. The proposed materials are horizontal cladding to match the materials and colour of the public conveniences, with wood shutter doors.

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

Community Safety: Object. The application makes no mention of where the water supply will come from. Food Hygiene Law requires that a food business must have 'an adequate supply of potable water, which is to be used whenever necessary to ensure that foodstuffs are not contaminated' (Regulation (EC) 852/2004 Annex II Chapter 7 para 1(a)). Potable water must be used for hand washing, for cleaning surfaces that come in to contact with food or the hands of food handlers, cleaning food equipment and cleaning food. Water from the mains supply in the UK can be assumed to be potable (fit to drink) and we would expect the premises to have a mains water supply. The law requires that 'drainage facilities are to be adequate for the purpose intended. They are to be designed and constructed to avoid the risk of contamination' (Regulation (EC) 852/2004 Annex II Chapter I para 8). That is to say the drainage systems serving the food premises must be capable of efficiently disposing of waste water from hand washing, food washing and equipment washing and must prevent the entry of foul air or effluent from the drainage system into the food rooms. The application details for trade effluent 'collection and disposal on a daily basis'. We would expect the kiosk to be connected to the mains drainage system.

Drainage Engineer: No objection. A takeaway kiosk of this nature would be classified as less vulnerable when considering flood risk. Developments of this vulnerability are allowed within Flood Zone 3. Due to the small size of the proposed development, the submitted flood risk assessment would be suitable.

Conservation Officer: No objections to the revised plans. From the conservation perspective they've now agreed the suggestions made back in February. So I have no disagreement with those now accepted modifications.

Brixham Town Council: Objection based on design being out of keeping in a conservation area and against the guidance set out in the Town Design Statement in the submitted Brixham Peninsula Neighbour Plan.

Strategic Planning: No objections to the introduction of a small retail use in this edge of centre location.

Summary Of Representations

The application was publicised through a site notice and neighbour notification letters. Five neighbour notification letters were sent to those neighbours which the development could affect. No representations were received.

Relevant Planning History

No previous planning history relating to the site.

Key Issues/Material Considerations

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

1. Principle of Development
1. Visual Impact
3. Development Amenity
4. Flood Risk
5. Other Considerations

1. Principle of Development

Policy TO1 of the Local Plan supports in principle the improvement of existing and the provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark. The application site is located within the Core Tourism Investment Area (CTIA) as designated in Policy TO1. As such, given the site's location within a CTIA and as the proposed kiosk provides an additional area for individuals to purchase refreshments who are visiting the Brixham Harbour and particularly East Quay, the proposal would comply with Policy TO1 of the Local Plan.

Policy TC3 of the Local Plan is for retail development proposals in Torbay. The site lies immediately adjacent to the Brixham Town Centre and is not sited directly within a retail centre, however it is easily accessible and well connected to Brixham Town Centre. It should be noted that Policy TC3 is applicable to this application, as the site is immediately adjacent to the Brixham Town Centre it classifies as edge-of-centre proposal. Due to its diminutive nature, it is considered that the proposal is of a scale and nature which complements the role and character of the area as it offers refreshments to those visiting the seaside location. The proposal would not result in harm to the vitality and viability of Brixham Town Centre and would provide a positive tourist element to East Quay. The proposal should not cause any unacceptable impacts (individually or cumulatively) on the existing centre or undermine any special cultural or tourism appeal and will not result in the loss of key retail, tourism, cultural or other facilities. On balance, the proposal is considered to comply with Policy TC3 of the Local Plan due to its edge-of-centre location and diminutive nature and the guidance contained within paragraph 87 of the NPPF.

2. Visual Impact

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.

There are a number of kiosks located along Brixham Harbour and East Quay. Given its siting, scale, and design it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality. The proposal is considered to be in accordance with Policy DE1 of the Local Plan, and the guidance contained in the NPPF.

The site is located within the Brixham Town Conservation Area. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. Brixham Town Council have objected to the application based on the design being out of keeping in a conservation area and against the guidance set out in the Town Design Statement in the submitted Brixham Peninsula Neighbourhood Plan. Initially, the Council's Conservation Officer also raised concerns. However, since that time, revised plans have been received to overcome the Conservation Officer's initial concerns, which were to ensure that the material of the shutter door on the kiosk was wooden. The Conservation Officer has stated that the revised plans are considered acceptable.

Given the proposal's siting, modest scale, design, and presence of broadly similar structures in the locality, in addition to the advice received from the Council's Conservation Officer, it is considered that the proposal would result in less than substantial harm to the conservation area. However, the degree of harm is limited and outweighed by public benefits through the provision of a refreshment outlet that would contribute to the area's tourism offer. On balance, the proposal is considered to be in accordance with Policy SS10 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 on East Quay next to the public conveniences and a public seating area. 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 Environmental Health Officer has objected to the proposal on the grounds of food hygiene and risk of food hygiene contamination, however, these concerns should carry limited planning weight as they are more appropriately dealt with under other legislative regimes.

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

4. 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 in Flood Zone3. The application is accompanied by a site specific Flood Risk Assessment. The Council's Drainage Engineer raises no objection to the proposal and states that a kiosk of this nature would be classified as less vulnerable when considering flood risk and therefore developments of this vulnerability are allowed within Flood Zone 3. The Council's Drainage Engineer has stated that due to the small size of the proposed development, the submitted flood risk assessment would be suitable. The proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

As the proposal is intended to provide a refreshment kiosk to serve a Core Tourism Investment Area, which forms part of a coastal location, there are not considered to be any sequentially preferable locations for siting the proposal. As such, the proposal is in accordance with the guidance contained in the NPPF.

5. Other Considerations

The Brixham Peninsula 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 policies for this application are Policy J5 (Sustaining a Vibrant Harbour-Side Economy) and BE1 (Heritage Assets and their Setting). Policy J5 states that development proposals around the harbour should be in conformity with Policy TO1 of the Local Plan. The proposal complies with Policy TO1 of the Local Plan and therefore complies with Policy J5 of the Brixham Peninsula Neighbourhood Plan. Policy BE1 states that proposals which affect designated and non-designated heritage assets must comply with the requirements of the National Planning Policy Framework and the relevant policies of the Local Plan. The Council's Conservation Officer is satisfied with the revised proposal, as are planning officers, and as discussed above, the proposal complies with the NPPF and the Local Plan. The proposal is in accordance with Policy BE1 of the Brixham Peninsula Neighbourhood Plan.

The proposal is therefore considered to be comply with the Brixham Peninsula Neighbourhood Plan.

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. The refreshment kiosk hereby approved shall be operated in accordance with the submitted and approved flood risk assessment received 15th November 2018.

Reason: In the interests of managing flood risk to occupiers in accordance with the National Planning Policy Framework, and to comply with Policies ER1 and ER2 of the Adopted Local Plan.

Informative(s)

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

Relevant Policies

DE1 - Design
SS10 - Conservation and Historic Environment
TO1 - Tourism, events and culture
DE3 - Development Amenity
ER1 - Flood Risk