



Mr David Jobbins
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Please reply to:

Mr Robert Brigden- Team Leader (Development Management)
Spatial Planning
2nd Floor, Electric House
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My Ref: P/2015/0961

Your Ref:

Telephone: 01803 208803

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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