

4Application Number

P/2019/0237

Site AddressHarbour Light Restaurant
North Quay
Paignton
TQ4 6DU**Case Officer**

Miss Emily Elliott

Ward

Roundham with Hyde

Executive Summary/Key Outcomes

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

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

Recommendation

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

Reason for Referral to Planning Committee

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

Statutory Determination Period29th April 2019.**Site Details**

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

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

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

Detailed Proposals

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

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

Policy Context

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

Development Plan

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

Material Considerations

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

Summary Of Consultation Responses

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

Highways Engineer: Highways have no technical issues.

South West Water: No objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

Details of Extract/Ventilation System:

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

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

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

Harbour side (southern) seating area:

Sunday to Thursday – 08:00 – 23:00

Friday and Saturday – 08:00 – 24:00

Cinema side (western) seating area:

Monday – Sunday – 08:00 – 21:00

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

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

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

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

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

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

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

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

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

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

Marine Licensing

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

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

Marine Planning

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

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

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

No operational issues with the seating plan they have submitted.

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

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

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

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

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

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

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

Summary of Representations

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

Relevant Planning History

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

Key Issues/Material Considerations

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

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

1. Principle of development

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

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

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

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

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

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

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

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

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

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

2. Economic Benefits

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

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

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

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

2. Visual amenity

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

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

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

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

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

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

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

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

3. Residential amenity

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

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

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

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

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

4. Highways

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

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

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

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

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

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

5. Ecology

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

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

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

The proposal complies with Policy NC1 of the Local Plan.

6. Flood risk

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

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

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

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

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

8. Other Considerations

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

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106/CIL -

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

EIA:

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

Conclusions

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

Condition(s)/Reason(s)

Details of Extract/Ventilation System:

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

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

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

Window and Door Details

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

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

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

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

Travel Plan

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

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

Flood Risk Assessment

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

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

ER2 of the Adopted Torbay Local Plan 2012-2030.

Construction Method Statement

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

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

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

Bin Storage

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

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

Bicycle Storage

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

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

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

Hours of Use

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

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

External Materials

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

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

Marine Licence - Informative

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

Appropriate Pollution Control Measures - Informative

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

Relevant Policies

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

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

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