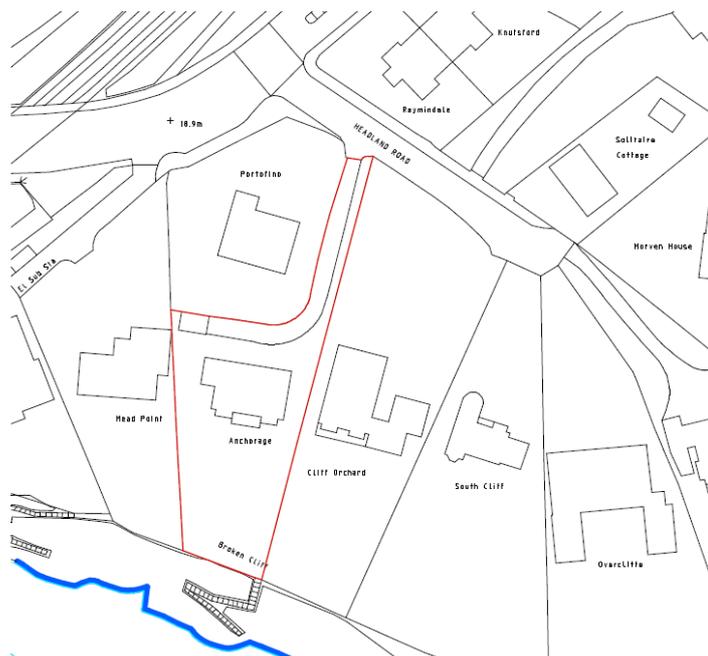




Application Site Address	The Anchorage Headland Road Torquay TQ2 6RD
Proposal	Section 73 application to vary or remove conditions in relation to planning application P/2018/0348: Variation of condition 9 - Balustrade
Application Number	P/2019/0261/VC
Applicant	Mr Graham Kenny
Agent	n/a
Date Application Valid	07.03.2019
Decision Due date	02.05.2019
Extension of Time Date	
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	The application has been referred to Planning Committee as the condition to be removed was imposed by the previous development management committee.
Planning Case Officer	Ross Wise



Site Details

The site comprises a large contemporary dwelling which is well set back from the road frontage on the south side of Headland Road. This house has replaced a large conventional detached dwelling, the original plot of which has been sub-divided. It shares a communal driveway with a new dwelling (allowed at appeal) which was built around 9 years ago. The property has a very large rear garden which is level and extends some 26 metres to the edge of "Broken Cliff" and the sea below. The rear garden to the property (together with the adjoining properties) is located within the Coastal Change Management Area. The side boundaries to the rear garden are screened by hedging and shrubs and is open to the cliff edge. There are slight variations in the heights of the properties along the seaward side of Headland Road but differences are not significant as the plots are all reasonably level.

Description of Development

This Section 73 planning application seeks the removal of condition 9 of planning permission P/2018/0348.

Planning permission P/2018/0348 gave retrospective consent for a number of changes that had been undertaken to a dwelling previously given permission in 2015. One of the changes applied for included the provision of a balustrade around the edge of a roof area at the rear of the property, rather than it being set back as had previously been approved. Condition 9 of the 2018 permission required the balustrade to be moved back to its previously approved position.

The removal of condition 9 would allow for the retention of the existing balustrade around the edge of the roof.

Pre-Application Enquiry

N/A

Relevant Planning 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")
- The Adopted Torquay Neighbourhood Plan 2012-2030

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:

Relevant Planning History

Planning permission was granted in 2015 for the demolition of a traditionally designed two-storey dwelling and its replacement with a large contemporary styled detached, three storey dwelling and attached double garage (with cinema room over).

In September 2017 an Enforcement Complaint was received that the new dwelling was being built higher than the approved plans indicated. This complaint was corroborated by the Enforcement Team, after measurements were taken.

To regularise the discrepancies, a retrospective planning application was submitted (P/2018/0348) to vary the permission previously given. The application concerned the installation of air conditioning units and a stainless steel flue on the SW elevation to the rear of the cinema room, along with a gas flue to the rear of the garage. The drawings also indicated that the approved area enclosed by the glazed balustrading had been extended out to the full perimeter of the rear, first-floor roof terrace. It was decided that the application should be considered by the Development Management Committee. The application was approved subject to 10 planning conditions

P/2018/0348 Replacement dwelling (variation of Condition P1 of original planning permission P/2015/0986) - To raise roof height, extend area enclosed by glazed balustrade above rear garden level accommodation and installation of 4 air conditioning units and a flue to the rear of the garage/cinema room on the side (west) elevation. Approved 15.11.2018

2017/0260/EN Enforcement Complaint in respect of height of the dwelling under construction.

P/2015/0986 Replacement Dwelling Approved 7.03.2016

DE/2015/0217 - Pre Application Enquiry - Redevelopment with replacement dwelling (similar to the current proposal). Positive response at Peer Group Review 9th June 2015

P/2010/1288 - Replacement dwelling at "Overcliffe", Headland Road - Approved 6.01.2011

P/2010/1393 - Replacement dwelling at "South Cliff", Headland Road - Approved 8.2.2011

Summary of Representations

The application was publicised through a site notice and neighbour notification letters.

2 objections and 0 letters of support were received, concerns raised include:

- Lack of compliance with planning condition.

Summary of Consultation Responses

None sought.

Key Issues/Material Considerations

Planning Officer Assessment

This application seeks the removal of Condition 9 of planning permission P/2018/0348. The condition is as follows:

Notwithstanding the details of the plans hereby approved ("1305-11 e" and "1305-12 h"), within 4 weeks of the date of this planning permission, the glazed balustrade on the flat roof area above the living/breakfast room shall be re-installed in accordance with its originally approved location, as indicated on previously approved plans "1305-11 c" and "1305-12 c" (planning permission reference P/2015/0986). The glazed balustrade shall thereafter be permanently retained in that position. The existing glazed balustrade, which extends beyond the previously approved footprint shall be removed within 4 weeks of the date of this planning permission.

Reason: To protect residential amenity and the privacy of neighbouring properties in accordance with Policy DE3 Development Amenity of the Torbay Local Plan 2012-2030.

The condition requires the removal of a balustrade that is sited on the perimeter of the roof and its re-siting further back. The applicant has stated that this would make access to the roof difficult for maintenance and create a dangerous environment when tending the roof garden as it would create an unprotected drop at the end of the terrace in excess of 3m. The applicant wishes to vary the condition to allow the balustrade to remain around the perimeter of the terrace whilst retaining Condition 7, which restricts the use of the roof for maintenance purposes only.

Condition 7 states that:

The outer area of flat roof above living/breakfast room identified as roof garden on approved drawing no.1305.11e shall not be used for sitting out and shall only be accessed for maintenance purposes unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity and to accord with Policy DE3 of the Torbay Local Plan 2012-2030.

The balustrading under consideration is located to the rear of the property; is around 1m in height from the level of the associated roof; and is constructed of toughened glass. Given its siting, scale, and use of materials, it is considered that the balustrade,

in its current position, does not result in any harm to the character of the host dwelling or the rear garden environment and, as such, is in accordance with Policy DE1 of the Local Plan, and Policy TH8 of the Torquay Neighbourhood Plan..

In relation to neighbouring amenity, as condition 7 prevents the use of the roof area for sitting out and only permits access for maintenance purposes, the retention of the balustrade in its existing location would not afford any more unacceptable level of overlooking towards neighbouring properties than could already occur. Given the siting, scale, and nature of the balustrade, it is considered that it would not result in unacceptable harm to the amenities of neighbours, in terms of their privacy, outlook, or access to light. As such, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

Given the restrictions in relation to the roof area, imposed by condition 7, and that the allowing the balustrade to remain in its current position is otherwise considered acceptable, the retention of condition 9 is not considered to be necessary.

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, subject to the use of a planning condition to ensure the facility serves local residents only.

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.

Planning Balance

The proposal is limited to the removal of a planning condition and as such the decision hinges around the acceptability in relation to the specifics of the planning condition and does not raise wider issues which need to be considered as part of the planning balance.

Conclusions and Reasons for Decision

The proposal would not result in any unacceptable harm to the amenities of neighbours or the character of the area and is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

Officer 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.

Conditions or Refusal reasons

Geology

The development shall be carried out in strict accordance with the Geology Report approved pursuant to condition 1 of planning permission P/2015/0986/PA.

Reason: In the interests of assessing the impact of the proposal on the Coastal Change Management Area and in order to accord with Policies C3 and ER4 of the Torbay Local Plan 2012-2030.

Geology

The development shall be carried out in strict accordance with the Geology Report approved pursuant to condition 2 of planning permission P/2015/0986/PA.

Reason: To mitigate the potential risks associated with development in close proximity to a cliff and in order to accord with Policies C3 and ER4 of the Torbay Local Plan 2012 - 2030.

Permitted Development

Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting

that order) no development of the types described in Schedule 2, Part 1, Classes A - F shall be carried out without the prior consent of the Local Planning Authority.

Reason: The site is in close proximity to neighbouring properties and within the Coastal Protection Zone and so the Local Planning Authority will need to maintain control over all of the cited developments in the interests of the amenities of the surrounding properties and to accord with Policies DE1, DE3 and C3 of the Torbay Local Plan 2012 - 2030.

Plant

Within 4 weeks of the date of this planning permission, the applicant shall submit details of all external plant and equipment installed, including noise levels and predicted noise levels at the nearest noise sensitive accommodation, to the Local Planning Authority for its approval in writing. Any external plant or equipment shall be installed in accordance with the approved details, and shall be retained permanently as such.

Reason: In the interests of protecting the residential amenity of the adjoining occupiers and to accord with Policy DE3 of the Torbay Local Plan 2012-2030.

Screen

Within 4 weeks of the date of this planning permission, the applicant shall submit to the Local Planning Authority for its approval in writing, details of measures to screen the 4 air conditioning units on the south west side elevation of the dwelling. The screen shall be installed within 4 weeks of the date of the submitted details being approved, and shall be permanently retained thereafter.

Reason: In the interests of protecting the visual amenity of the adjoining occupiers and to accord with policy DE3 of the Torbay Local Plan 2012 to 2030.

Materials

The development shall be carried out in strict accordance with the external materials approved pursuant to condition 6 of planning permission P/2015/0986/PA.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policy DE1 of the Torbay Local Plan 2012-2030.

Amenity space

The outer area of flat roof above living/breakfast room identified as roof garden on approved drawing no.1305.11e shall not be used for sitting out and shall only be accessed for maintenance purposes unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of residential amenity and to accord with Policy DE3 of the Torbay Local Plan 2012-2030.

Flood Risk Assessment

The development shall be carried out in strict accordance with the Flood Risk Assessment approved under planning permission P/2015/0986/PA, and the Drainage Strategy approved pursuant to condition 4 of planning permission P/2015/0986/PA.

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

Privacy Screens

Privacy screens, measuring 1.8metres in height from the floor level of both ends of the second floor level roof terrace, extending 3.210 metres as indicated on approved drawing "1305-11 e", shall be installed prior to first use of the second floor roof terrace hereby approved. The screens shall be obscure glazed to at least Pilkington Level 5 or equivalent. The screens shall then at all times be retained unless otherwise agreed in writing by the Local Planning Authority.

Reason: to ensure that the privacy and general amenity of the neighbouring occupiers is preserved and to accord with Policies DE1 and DE3 of the Torbay Local Plane 2012-2030.

Relevant Policies

DE1 - Design

DE3 – Development Amenity

TH8 – Established architecture.