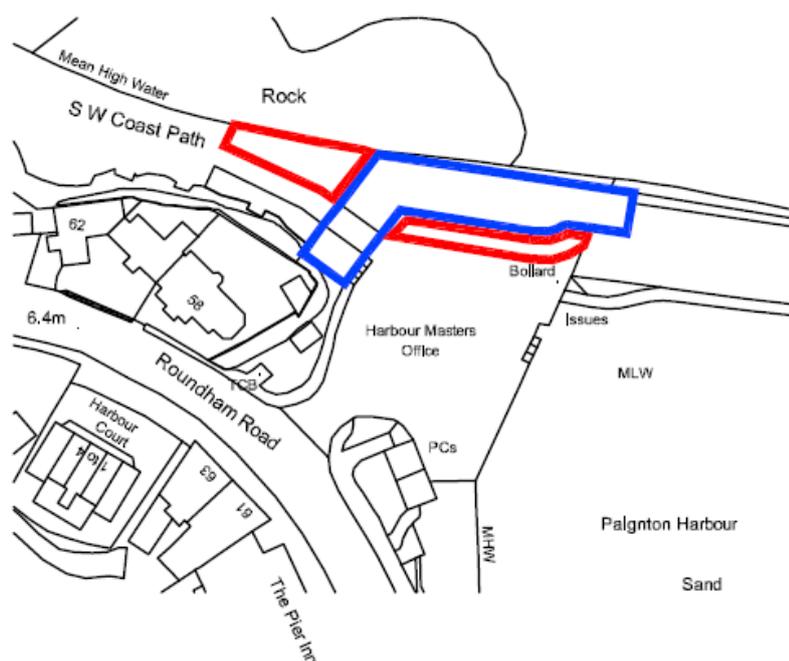




Application Site Address	Harbour Light Restaurant North Quay Paignton TQ4 6DU
Proposal	Formation of external seating areas to front and side with terrace.
Application Number	P/2019/0961/PA
Applicant	St Austell Brewery
Agent	Design Management Partnership
Date Application Valid	01.11.2019
Decision Due date	27.12.2019
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 proposed development is on land that is registered as a Torbay Council asset and an objection has been received, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Ross Wise



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 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.

Description of Development

The proposal seeks to form an external seating area to the front and side of the Restaurant. 80 and 84 covers are proposed to the Western and south-eastern sides of the building respectively.

Pre-Application Enquiry

N/A

Relevant Planning Policy Context

Development Plan

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

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:

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area

Relevant Planning History

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

P/2019/0237: Internal and external alterations, additional external terrace area, external store areas and seating areas. New condenser units and structural alterations. Approved (Committee) 17.07.2019

P/2019/0238: Internal and external alterations, additional external terrace area, external store areas and seating areas. New condenser units and structural alterations. Approved (Committee) 17.07.2019

Summary of Representations

5 objections have been received (of the 5 objections 4 were received from 2 separate parties). The main concerns are summaries as follows:-

- Operating hours.
- Proximity of seating to residential properties.
- Impact on the SW Coast Path.
- Supervision of the seating area.
- Noise impacts.
- Light spill.

Summary of Consultation Responses

Harbour Authority: *With reference to the above application for outside seating on the promenade side of the Harbour Light building; I have no objections with this application and in fact support the idea. The footfall at Paignton harbour has reduced considerably over the last few years which has had a negative effect on all the businesses located here, so the new development and investment by St Austell Brewery is much needed and I am hoping will be the start of a regeneration of the harbour. One of the issues facing the harbour is its location and although it can be seen from the sea front of Paignton it is not obvious to visitors that it is place that offers any services. The outside seating will allow people to see that there is an open business. My dealings so far with the management of SAB lead me to believe that they care about their neighbours and would be willing to ensure that they do all they can to cause as little disturbance as possible.*

Torbay Council Local Highways Authority: *Highways have no technical issues with this application.*

Torbay Council Drainage Engineer:

- *The development lies within Flood Zone 3.*
- *The developer has submitted a site specific flood risk assessment in support of the planning application however this site specific flood risk assessment relates to the works within the restaurant, there is no mention within the report about external seating areas.*

Based on the above comments, before planning permission is granted the developer must update the site specific flood risk assessment to include the proposed external seating areas.

Police- Designing out Crime Officer: *Thank you for requesting consultation on the above application. Having liaised with the local policing team and the force licensing department I would like to advise that the police raise no objections to the proposal but ask that from a designing out crime, fear of crime, antisocial behaviour (ASB) and conflict perspective the following advice and recommendations are considered and implemented wherever possible:-*

The noise impact statement states that the premises will operate between 9am and 11pm which is supported.

It is noted in the Design and Access Statement (DAS) that there will be 'non-permanent' furniture (outside). It is recommended that suitable storage facilities for the outside furniture is factored in at this early design stage. Alternatively the furniture should be capable of being stacked and securely stored in a designated place. By implementing this will provide a practical solution should tables and chairs that are left out attract 'out of hours' gatherings, as this could have a negative impact on quality of life issues for nearby residents as a result of late night noise and nuisance issues and the potential to increase the fear of crime. Also if the items are left out and accessible they could be vulnerable to theft or used as climbing aids or to cause damage.

To deter and assist in the prevention and detection of crime and antisocial or unacceptable behaviour a monitored CCTV system with a clear passport to compliance and compatible lighting should be installed to cover outside seating areas. Some design elements of buildings can inadvertently become vulnerable to criminal activity or ASB generally due to them being concealed from view. It is recommended that the external staircase on the east elevation is capable of being securely enclosed when premises are closed, without undermining fire escape regulations, but if this is not a desirable option the staircase should be left as open to view as possible and covered by CCTV.

A management plan should be agreed prior to approval to ensure that the use of the external areas are well managed and regularly supervised by staff.

Paignton Neighbourhood Forum: no response.

Torbay Council Environmental Health: *Further to your recent consultation regarding the above application I have reviewed the Noise Impact Assessment for the external seating areas prepared by Acoustic Associates SW Ltd and have the following comments to make:*

Overall, the report found that predicted noise levels at the nearest affected residential properties from raised voices arising from people occupying the external seating areas is likely to only increase noise levels by 1 to 2 dB up until 11:00pm. This is based on likely occupancy rates of 100% at lunchtime, 50% in the evenings until 9:00pm and 25% until 11:00pm (southern seating area only).

In practice this would suggest that, although the noise from people using these areas will be audible by residents, it will not be at such a level that will influence their behaviour or result in a perceived change in the quality of their lives. In addition, the gardens and outdoor amenity space at the nearby properties will still be within the

“good” criteria in terms of BS 8233: Guidance for the control of noise in and around buildings and again there should be no adverse impacts in this regard.

Furthermore, I understand that following a meeting with residents the applicant has now revised their plan, and propose the seating area to the north of the building to be smaller with a maximum capacity of 80 people which should reduce further reduce noise levels.

However, having said this there are some caveats to bear in mind. Firstly, although the assessment took into account raised voices, it did not include shouting or potentially rowdy behaviour. Secondly, the applicant has suggested that the terminal hour for the table area to the north of the building would be restricted to 9:00pm. In practice, clearing this area completely at that time may be difficult to achieve as people may be mid-way through a meal and unwilling to move away. Furthermore as there are no barriers separating the seating area from the public right of way there is nothing in place to discourage groups of people using there seating area after the premises close at 11:00pm.

Nonetheless, such problems may be controlled by more specific licensing conditions (such as a management plan to control rowdy behaviour, or a requirement for seating to be removed after the terminal hours of 9:00pm/11:00pm) when the application goes before the licensing committee in due course.

Having had the opportunity to review the issue of noise in some detail I have no specific objections to this application being approved subject to a condition requiring the use of the northern seating area to cease after 9:00pm together with a requirement that the area is provided with barriers to prevent it being used by non-patrons of the premises. The question of managing noise from rowdy behaviour is one which would apply to the whole premises and can be addressed by conditions put in place by the licensing committee in due course. Should you have any further queries or concerns please let me know.

Key Issues/Material Considerations

1. Principle of development.
2. Economic Benefits.
3. Impact on Heritage Assets and Visual amenity.
4. Impact on residential amenity.
5. Impact on highways.
6. Flooding and drainage.

Planning Officer Assessment

1. Principle of development.

The proposal is for the formation of external seating areas to front and side with terrace.

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.

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. 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.

Comments received from the Harbour Authority are clearly supportive of the proposal and believe it may lead to further regeneration in the harbour which is experiencing a period of decline in visitors.

Policy C2 of the Local Plan specifies that in the developed areas of coast, development will be permitted where it provides benefit to Torbay's economy and does not unacceptably harm the landscape character and appearance of natural, historic or geological assets.

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, the Conservation Area and the CTIA.

The proposal is considered acceptable in principle, having regard to Policy TO1, TC3 and C2 of the Local Plan and Policy PNP3 of the PNP.

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.

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.

3. Impact on Heritage Assets and 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. 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 building is located in the Roundham & Paignton Harbour Conservation Area and is a Grade II Listed Building. The building's significance is derived from its associated use with the harbour as its probable historic use as a fish cellar and net store. The building presents an industrial architectural character that is still visible, even after the conversions of the upper floor and the creation of the underpass, connecting the

harbour with the south-west coast path. In terms of its evidential value, there is likely to be little due to the previous conversions.

The building is mentioned within the Roundham and Paignton Harbour Conservation Area Appraisal (CAA) and describes its history of uses and its relationship with the working harbour. Predominantly the external building materials are exposed local Breccia stone and painted render.

The use of the areas adjacent to the principle building has likely to always have had an ancillary nature. The proposal now seeks to retain this historic nature of use, with the seating being ancillary to the previously approved restaurant use.

The application proposes to site outside seating to be used by customers of the restaurant to the south-eastern and western areas adjacent to the building, as detailed within the submitted plans. There are no alterations proposed to the fabric of the listed building.

Following objections from, and further consultation with residents of the neighbouring dwellings, the applicant has reduced the total number of covers to the western side, with the seats that would be located along the cliff face side removed from the application. Subsequently, the overall visual impact of the proposal has been decreased in the areas where seating has been removed.

As the proposed furniture is to be robust and not easily moveable its impact in visual terms would be more permanent than lightweight furniture. However, due to the exposed location of the site lightweight furniture is not appropriate.

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.

Due to the semi-permanent nature of the seating area, it is concluded that the proposal would 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 is also considered that the proposal would preserve the character and appearance of the Roundham & Paignton Harbour Conservation Area, to the extent that there would not be any harm to the listed building.

The proposal is considered to be acceptable with regards to Policies DE1, HE1 and SS10 of the Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan, and the guidance contained in the NPPF.

4. Impact on Amenity

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. Policy PNP1(g) of the PNP states that all development will be expected to show how crime and fear of crime have been taken into account in the proposal submitted having regard to "Designing out Crime" Guidance.

The Council's Environmental Health Officer has raised no objection to the proposal, subject to the implementation of planning conditions regarding the management and operational hours of the proposed seating areas.

As mentioned previously within this report, after consultation with local residents, the proposal has been reduced in scale in terms of the amount of covers to be provided. 80 are now proposed to the western side of the restaurant, reduction of 32 covers. In addition to this, the applicant has agreed to restrict the operating hours of the outside seating area to be located on the Western side of the restaurant to 9pm. Smoking would also not be permitted in this area.

The reduction in the proposed number of covers to the Western side the restaurant is considered to present a more acceptable layout with regards to potential impacts on the amenities of neighbouring residents. Many of the above restrictions would be imposed through licencing agreements, however as mentioned previously within this report, a management plan for the proposed seating areas will be sought through a planning condition to ensure an acceptable form of development that aligns with the relevant licence agreements.

Subject to the conditions being met, the proposal is considered to be acceptable with regard to Policy DE3 of the Local Plan and Policy PNP1(g) of the PNP.

5. Impact on Highways.

Policies TA2 and TA3 of the Local Plan establish criteria for the assessment of development proposals in relation to access arrangements and vehicle parking.

Concerns have be raised by the residents of the neighbouring properties regarding the potential impacts on the SW Coast Path and access for emergency vehicles. However, the Local Highways Authority has raised no objection to the proposal on the technical elements.

The proposal is considered to be acceptable with regard to Policies DE3, TA2 and TA3 of the Local Plan.

6. Flood Risk and Drainage.

Policy ER1 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) of the PNP states that developments will be required to comply with all relevant drainage and flood risk policy.

As the site is located within Flood Zone 3, the application is required to be accompanied by a site specific flood risk assessment.

An updated Flood Risk Assessment (FRA) has now been received that references the proposed outside seating area following the consultation response from the Council's Drainage Engineer.

A planning condition will be employed to ensure the development is carried out in accordance with the details of the updated FRA.

Subject to the conditions being met, the proposal is considered to be acceptable with regards to Policies ER1 and ER2 of the Local Plan and Policy PNP1(i) of the PNP.

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: Not applicable. **CIL:** N/A

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 considered to represent an appropriate and beneficial use which will give both the listed building a sustainable future and therefore enhance the Conservation Area. The proposal in terms of design and heritage impact are considered to be acceptable. Whilst concern has been raised in respect of residential amenity, these issues are addressed in the main body of the report and are not considered to be so significant as to warrant a refusal of planning permission.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, heritage assets, or local amenity; and provide acceptable arrangements in relation to access flood risk, and ecological constraints. The

proposed development is considered acceptable, having regard to the Torbay Local Plan, the Paignton 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

Northern Seating Area.

The use of the northern seating area shall not be used between 2100 hrs and 0800 hrs on any day and the planters defining the outer limit of the seating area shall be provided with notices highlighting the area is not to be used by non-patrons of the premises.

Reason: In the interests preserving the residential amenity of neighbouring occupiers and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

FRA.

The development hereby approved shall be carried out in strict accordance with the submitted site specific flood risk assessment 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.

Informatives

01. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
02. 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

Local Plan Policies

- TO1 – Tourism, Events and Culture.
- SS4 – The Economy and Employment.
- SS11 – Sustainable Communities.
- TC5 – Evening and Night time Economy.
- DE1 – Design.

DE3 – Development Amenity.
TA2 – Development Access.
TA3 – Parking Requirements.
ER1 – Flood Risk.
ER2 – Water Management.
NC1 – Biodiversity and Geodiversity.
HE1 – Listed Buildings
SS10 – Conservation and the Historic Environment.
SS3 – Presumption in favour of Sustainable Development.

Neighbourhood Plan Policies

PNP1(c) – Design Principles
PNP1(e) – Commercial development.
PNP1(g) – Designing out Crime.
PNP1(i) – Surface Water.
PNP3 – Paignton Harbour.