



Friday, 8 June 2012

DEVELOPMENT MANAGEMENT COMMITTEE

A meeting of **Development Management Committee** will be held on

Monday, 18 June 2012

commencing at **2.00 pm**

The meeting will be held in the Ballroom, Oldway Mansion, Torquay Road,
Paignton, TQ3 2TE

Members of the Committee

Councillor McPhail (Chairwoman)

Councillor Morey (Vice-Chair)

Councillor Addis

Councillor Baldrey

Councillor Barnby

Councillor Brooksbank

Councillor Hill

Councillor Kingscote

Councillor Pentney

Working for a healthy, prosperous and happy Bay

For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207087

Email: governance.support@torbay.gov.uk



DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 21 May 2012.

(Pages 1 - 4)

3. **Declarations of Interests**

(a) To receive declarations of personal interests in respect of items on this agenda

For reference: Having declared their personal interest members and officers may remain in the meeting and speak (and, in the case of Members, vote on the matter in question). If the Member's interest only arises because they have been appointed to an outside body by the Council (or if the interest is as a member of another public body) then the interest need only be declared if the Member wishes to speak and/or vote on the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of personal prejudicial interests in respect of items on this agenda

For reference: A Member with a personal interest also has a prejudicial interest in that matter if a member of the public (with knowledge of the relevant facts) would reasonably regard the interest as so significant that it is likely to influence their judgement of the public interest. Where a Member has a personal prejudicial interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Democratic Services or Legal Services prior to the meeting.)

4. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

5. **P/2012/0280/MPA - Edginswell Business Park, Orchard Way, Torquay**

Application for full planning permission for a Tesco store (4451 sq mts / 47,910 sq ft) total sales area), of which 2795 sq mts convenience goods space and 1160 sq mts comparison goods space, including a customer café; 977 sq mts (10,516 sq ft) office development (2 no. buildings); associated infrastructure (including

(Pages 5 - 30)

new roundabout on Orchard Way and widening of Newton Road between Orchard Way and Riviera Way); new access; 442 parking spaces (of which 371 for Tesco); and landscaping. Outline application for development of a B1 office building (2090 sq mts) with associated parking and access (all matters reserved except layout and means of access) (Departure from Local Plan) Extinguishment of a public right of way Re advertisement.

6. **P/2011/0991/PA - 27 - 29 Walnut Road, Torquay** (Pages 31 - 45)
Change of use to create a single unit to provide sheltered housing accommodation with warden services for vulnerable adults (Re advertisement).
7. **P/2012/0272/OA - 15 Newton Road, Torquay** (Pages 46 - 51)
Formation of 4 flats in site curtilage (In Outline).
8. **P/2012/0344/PA - 91 Avenue Road, Torquay** (Pages 52 - 54)
Proposed change of use application from existing Guest House to Residential Accommodation.
9. **P/2012/0455/PA - 25 Ilsham Road, Torquay** (Pages 55 - 58)
Change of use from Co-op store to luxury high end beauty salon/spa offering a range of treatments to include manicure, pedicure, chiropody, facials, theraputic massage, waxing etc.
10. **P/2012/0500/R3 - Land To The North East Of A3022, Brixham Road And West Of Elberry Lane, Churston** (Pages 59 - 62)
Change of use to temporary park & ride facility for 230 vehicles, with temporary buildings to run until 31st October 2014.
11. **P/2012/0233/R3 - 145 - 149, Winner Street, Paignton** (Pages 63 - 73)
Construction of 3 new 2 storey flats with 2 bedrooms and 3 new self contained commercial units.
12. **P/2012/0327/PA - Lewton Lodge, Adelphi Lane, Paignton** (Pages 74 - 78)
Change of use from 2 Holiday apartments to 2 Residential apartments.
13. **P/2012/0392/MPA - Land at Junction of Long Road and Waddeton Road, Paignton** (Pages 79 - 86)
Erection of education facility to provide a centre of excellence for carbon reduction, renewable energy and sustainable construction, including a demonstration residential building, parking, landscaping and access (Use Class D1). Closure of vehicular access.
14. **P/2012/0461/PA - Barton Pines Holiday Park, Blagdon Road/West Lane, Paignton** (Pages 87 - 89)
Variation of S106 on applications P/2008/1217 and P/2009/0479/PA.

15. Public speaking

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email governance.support@torbay.gov.uk before 11 am on the day of the meeting.

16. Site visits

If Members consider that site visits are required on any of the applications they are requested to let the Democratic Services Section know by 5.00 p.m. on Wednesday, 13 June 2012. Site visits will then take place prior to the meeting of the Committee at a time to be notified.



Minutes of the Development Management Committee

21 May 2012

-: Present :-

Councillor McPhail (Chairwoman)

Councillors Morey (Vice-Chair), Addis, Baldrey, Barnby, Brooksbank, Hill, Kingscote and Pentney

(Also in attendance: Councillors Ellery)

1. Election of Chairman/woman

Councillor McPhail was elected chairwoman for the 2012/2013 municipal year.

2. Appointment of Vice-Chairman

Councillor Morey was appointed vice-chairman for the 2012/2013 municipal year.

3. Minutes

The Minutes of the meeting of the Development Management Committee held on 30 April 2012 were confirmed as a correct record and signed by the Chairman.

4. P/2012/0181/PA - Brampton Guesthouse, 11 Beach Road, Paignton

The Committee considered an application for the change of use from trading bed and breakfast into 3 self contained flats.

Resolved:

Approved subject to:

- (i) the completion of a Section 106 Agreement in respect of waste management and recycling, sustainable transportation, education, lifelong learning and green space and recreation within six months of the date of this Committee or the application be reconsidered by Members; and
- (ii) revised plans detailing the provision of a bin store at the front of the property for the two proposed upper floor flats, to be delegated to the Executive Head of Spatial Planning in consultation with the Chairman.

5. P/2012/0283/VC - 26 Broadpark Road, Paignton

The Committee considered an application in respect of a variation of condition to application P/2011/0990/HA - condition 2 - trellis panel in place of Leylandii.

Prior to the meeting, written representations were circulated to the Committee and Members of the Development Management Committee undertook a site visit. At the meeting Lauren Kingsley addressed the Committee in support of the application.

Resolved:

Approved subject to the conditions and informative set out in the submitted report.

6. P/2012/0349/PA - The Blue Seafood Company, Unit 15 South Quay, The Harbour, Paignton

The Committee considered an application in respect of continuing siting of 40ft container on allocated parking area; continue siting of 20ft blast freezer on allocated parking area.

Prior to the meeting, written representations were circulated to the Committee and Members of the Development Management Committee undertook a site visit. In accordance with Standing Order B4.1 Councillor Ellery addressed the Committee.

Resolved:

Refused on the grounds of the impact on the Conservation Area.

7. P/2010/1397/PA - Sunnyvale, 31 Loxbury Road, Torquay

The Committee considered an application in respect of formation of single detached dwelling within curtilage; demolition of garage and form 2 new garages and vehicle access (revised scheme)(As revised by drawings submitted 01-08-11).

Prior to the meeting written representations were circulated to the Committee and Members of the Management Development Committee undertook a site visit. At the meeting Mike Hughes addressed the Committee in support of the application.

Resolved:

Approved subject to:

- (i) the completion of a Section 106 Agreement in respect of sustainable transport, green space and recreation, lifelong learning and waste management and recycling within six months of the date of this Committee or the application be reconsidered by Members; and

- (ii) condition 01 being amended to ensure that the allocated parking is made available for use both by the existing and proposed dwellings
- (iii) the imposition of conditions set out in the submitted report .

8. P/2012/0017/PA - 1 Birds Haven, Avenue Road, Torquay

The Committee considered an application for the formation of 1 dwelling on land adjacent to 1 Birdshaven.

Prior to the meeting written representations were circulated to the Committee and Members of the Development Management Committee undertook a site visit. At the meeting Alan Tate addressed the Committee in support of the application.

Resolved:

Refused on the grounds that the site is within the Urban Landscape Protection Area and the design is out of keeping.

9. P/2012/0191/HA - 2 York Crescent, Torquay

The Committee considered an application in respect of alterations and formation of ground and first floor extension; retrospective fence.

Prior to the meeting written representations were circulated to the Committee and Members of the Development Management Committee undertook a site visit. At the meeting David Homer addressed the Committee against the application and Simon Blake addressed the Committee in support.

Resolved:

Approved subject to the conditions set out in the submitted report.

10. P/2012/0211/PA - 72 Kenwyn Road, Torquay

The Committee considered an application in respect of formation of extension at rear with pitched roof and demolish existing rear extensions.

Prior to the meeting written representations were circulated to the Committee and Members of the Development Management Committee undertook a site visit.

Resolved:

Approved subject to the conditions set out in the submitted report.

11. Appeal Decisions

The Committee noted the outcome of recent appeal decisions.

Chairman

Agenda Item 5

Application Number

P/2012/0280

Site Address

Edginswell Business Park
Orchard Way
Torquay
Devon
TQ2 7FA

Case Officer

Mrs Helen Addison

Ward

Shiphay With The Willows

Description

Application for full planning permission for a Tesco store (4451 sq mts / 47,910 sq ft) total sales area), of which 2795 sq mts convenience goods space and 1160 sq mts comparison goods space, including a customer café; 977 sq mts (10,516 sq ft) office development (2 no. buildings); associated infrastructure (including new roundabout on Orchard Way and widening of Newton Road between Orchard Way and Riviera Way); new access; 442 parking spaces (of which 371 for Tesco); and landscaping. Outline application for development of a B1 office building (2090 sq mts) with associated parking and access (all matters reserved except layout and means of access) (Departure from Local Plan) Extinguishment of a public right of way Re advertisement

Executive Summary/Key Outcomes

The application is for the construction of a Tesco store (approx 77,000 sq ft/7,000 sq m), with associated access improvements and parking (371 spaces) and three office buildings.

Tesco has suggested that the proposal would also:

- Provide approximately 200 jobs in the Tesco store and café;
- Enable three office buildings to come forward, totalling just over 3,000 sq m (approx 30,000 sq ft), which would provide approx. 130 jobs;
- Secure a financial contribution (as yet unspecified) to be used for promoting future development and strengthening Torquay and Paignton town centres.

As part of the proposal, Tesco has offered to:

- To bid for the development of a new store within the Union Street redevelopment proposal
- To bid for the development of a new store at Paignton at Victoria Square or a nearby site

- To keep all central area Tesco stores in Torquay and Paignton trading until the larger redevelopment schemes are delivered

There are a number of key issues against which this proposal must be assessed:

1. Existing Local Plan policy

This site is allocated for B1 office development in the Torbay Local Plan 1995-2011. As such this proposal does not comply with existing Local Plan policy. In accordance with the NPPF, the Council has previously explored alternative uses of the site but these have not been forthcoming. Recent confirmation of funding for the South Devon Link Road is a 'game changer' for this gateway site, which should now be extremely attractive to investors for business park/employment purposes. The proposal would result in loss of a substantial area of the site for employment purposes. There is no over-riding reason to allow such a loss.

2. The availability of town centre sites

The existing Local Plan identifies town centres as the focal points for retail provision and requires proposals for new retail provision, outside town centres, to show that need cannot be met elsewhere. The Local Plan is consistent with the NPPF on this issue. Whilst the applicants contend there are no other suitable sites within the town centre, Members will be aware of proposals to bring forward the Town Hall Car Park site in Torquay, which could provide for a similar sized food store.

3. Retail/town centre impact

The proposal includes convenience (mainly food) floor space, totalling 2797 sq m, and comparison goods space totalling 1160 sq m. This level of provision is in excess of Torbay's needs, as evidenced in the recently updated (Sept 2011) retail study. The proposal will have a negative impact on existing food retail provision in town centres and local centres. The availability of convenience goods, on the scale proposed, would have a negative impact on Torquay Town Centre in particular, compounding the town centre's recent poor trading performance, and would undermine efforts to regenerate the town centre.

4. Emerging/refreshed planning policy

A new Local Plan is being prepared, but carries little weight in planning terms. However, the Council has adopted guidance (Future Retail Development in Torbay, Jan 2010) which acknowledges that a thriving retail sector in Torbay is essential to economic success. Importantly, it supports the provision of local food provision, alongside other services, in new or existing local centres (e.g. White Rock; Three Beaches). These local centres are vital to sustainable, well balanced communities in the Bay. The proposed Tesco store would not be consistent with this approach, is not in a 'gap area' for food retail provision and is likely to have a negative impact on local centres.

5. Other material considerations (e.g. design; highway impact; S106

requirements)

The site is important, in design terms, as a gateway site to Torbay. Its importance as a gateway site has been enhanced by confirmation of construction of the South Devon Link Road. The proposed development is poor in terms of design quality and will not make a positive contribution to local distinctiveness or place making. The applicant has failed to demonstrate that the proposed store and offices can operate without a negative impact on the highway network, but further information has been requested. The applicant has also failed to satisfy the Council's requirements in terms of planning contributions.

Recommendation

It is acknowledged there are some benefits to the proposal that may be attractive to Members, such as the potential for 200 jobs in the retail sector and the construction of approximately 30,000 sq ft of office space. It is not considered these benefits outweigh the harm, particularly over the long term, that could be caused by this proposal.

The reasons for refusal are set out at the end of this report. These follow the issues set out in the Executive Summary and relate, primarily, to the policies / principles set out in the existing Local Plan, more recently adopted retail policy and the National Planning Policy Framework.

However, Members may wish to instruct officers to explore the potential for an improved offer by the applicants for the site and mitigation. It is recommended that such instruction should only be accompanied by a recommendation from Members of 'minded to refuse', for the reasons set out in this report.

Site Details

The application site relates to part of the Edginswell Business Park site and is bounded by Hamelin Way to the west, the railway line and the A3022 Riviera Way to the north and properties accessed from Edginswell Lane to the south. The site is currently undeveloped. The site area is approximately 3.88 hectares (9.6 acres).

To the east, three office buildings have recently been constructed, one of which is in use by the NHS as a Renal Unit. Vehicular access to the site is via Orchard Way off the Newton Road. The ground levels on the site are lower than Hamelin Way and the A3022 and the site slopes from east to west. There are wooded embankments on the northern and western boundaries.

In the Torbay Local Plan 1995-2011 the site is allocated for Employment. There are designated wildlife sites along the railway and along the eastern side of the site. A buffer zone is shown around the north, south and east boundaries for strategic landscaping. Trees in the area are covered by TPO 2001.08.

Detailed Proposals

The application is submitted in full for a supermarket with a gross floor area of 7,149 m² (76,948 ft²). Of this floor area 4451 m² would be used for sales, of which 2795 m² would be for convenience goods and 1160 m² comparison goods and a customer café. The proposed store would stand on stilts above a car park for 371 vehicles. This would include the provision of 20 dedicated disabled spaces and 18 parent and child spaces. 46 cycle parking spaces would also be provided.

The floor area of the store excludes the area for cage marshalling and Dot Com marshalling which are 366 m² and 147 m² respectively. The service yard would be located to the south east of the store and would be accessed via a ramped road used exclusively by service/delivery vehicles. The service yard would be approximately 27 metres deep by 75 metres in width.

The store would be at first floor level and would be accessed via travelators or lifts. There would be a bus stop and recycling centre located at the site entrance.

The height of the proposed store would be approximately 13 metres, the width approx. 94 metres and the typical depth 71 metres.

Submitted in full is a proposal for two office buildings Office D (Vesta House) approx. 689m² net on two floors (790m² gross) and Office E (Edesia House) approx. 157m² (187 m² gross). These two buildings have already received planning permission under the second phase of the masterplan.

Submitted in outline is a proposal for a B1 office of 2090 m² gross floor area (Sarritor House), which has not previously received planning permission. The proposed building would be three storeys high. 71 car parking spaces would be provided.

The primary access to the site would be from Riviera Way A3022 via improved junctions with Newton Road and between Orchard Road and Newton Road. It is proposed to widen Newton Road up to the junction with Riviera Way to allow a two lane approach. A new roundabout is proposed at the junction of Edginswell Lane and Collaton Road.

The new South Devon Link Road will terminate adjacent to the application site on Hamelin Way, but will not link directly into the site.

If planning permission were granted Tesco state in their submission that they would commit to the following obligations:

- To bid for the development of a new store within the Union Street redevelopment proposal
- To bid for the development of a new store at Paignton at Victoria Square or a nearby site

- To keep all central area Tesco stores in Torquay and Paignton trading until the larger redevelopment schemes are delivered
- Working with local employment providers to deliver as many jobs as possible (around 200 in the Tesco store)
- Financial contribution to address other impacts.

The application has been screened by the Council under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and it was concluded that no Environmental Impact Assessment is required in support of the proposals.

Summary of Consultation Responses

SWW: No comments.

Teignbridge Council: No objections.

Network Rail: Holding objection. Requests more information relating to drainage and how the proposed car parking would increase the run off amount/rate into the watercourse.

Environment Agency: No objection in principle but identifies a number of issues that need to be resolved prior to determination of the application, particularly that there must be no encroachment within 7 m of the Edginswell Stream/Aller Brook.

Torbay Town Centres Company: Objects to the application on the grounds:

- The application is a major departure from the site's current designation
- There is no established need for the facility, as there is significant provision within the area
- An objective of the NPPF is to ensure the vitality of town centres
- The Torbay Local Plan supports the principle of town centre development rather than outside of existing centres.

Torbay Local Access Forum: Objects to the plan for the 3 storey office block as the parking area would be built across part of the adopted highway network on land that belongs to Torbay Council.

Senior Historic Environment Officer: The area of the business park including the area of this application was subject to a detailed archaeological assessment in April 2004 and followed up by further work in July 2007. The assessment and evaluation should be revisited to ascertain if further environmental archaeological deposits should be taken from the surviving deposits before their removal during development.

Torbay Friends of the Earth: Object to the application on the grounds that

the proposal is contrary to the Torbay Local Plan 1995-2011, there are too many supermarkets in the area, the site should be retained for office jobs, detrimental impact on town centre, detrimental impact on sense of community and number of jobs created likely to be reduced after a year or so.

Strategic Transportation: Raises a number of concerns about the Transport Assessment including that it appears to underestimate the level of traffic generation and has requested further information in support of the application. The agent has been asked to revisit the trip generation and either provide significantly more justification for the traffic levels forecast or adjust the traffic levels up to a more realistic level. As this hasn't been done recommends refusal on the basis of inadequate assessment and insufficient highways mitigation.

Natural England: The site lies at the extremity or a wider corridor of land identified as of potential strategic significance as a flyway for greater horseshoe bats associated with the South Hams SAC. The ecology report should take reasonable account of this and recommend that the landscaping associated with the project includes the creation and maintenance of new habitat suitable for commuting and/or foraging greater horseshoe bats, e.g. native broadland planting that is not affected by artificial illumination at night.

Environmental Health Officer: Comments awaited.

Landscape and Tree Officer: Comments awaited.

Summary Of Representations

A considerable number of letters of objection have been received and are available for inspection on the Council's website and in the Members room. A letter of objection has also been received from the Edginswell Residents Association which is endorsed by the Chairman of the Shiphay and The Willows Community Partnership. The Edginswell Residents Association has submitted a petition against the proposal with 50 signatures. An objection has been received from Wilkinson Hardware Stores Ltd. A small number of letters of support have been received. The issues raised in objection to the proposal include:

- no need for the store as there are other supermarkets in the area e.g. M and S, Asda, Lidl, Sainsburys
- Would result in traffic problems
- Increased noise
- Increased pollution
- Major departure from local plan which designates site for B1 office use and a high quality business park
- Adversely affect the environment of Edginswell and change its character
- Detrimental to town centre
- Additional traffic will impact on busy hospital and fire station
- If the proposal is built there will be problems for local road users

- The visual impact of a Tesco store at the gateway into Torquay would be devastating to the local community
- Deliveries would occur 24 hours per day
- Site is important as a gateway to Torquay
- There is a 'finite' purse of retail expenditure and any increase in growth by one outlet is matched by a decrease elsewhere
- There are locations available in the three town centres of Torquay, Paignton and Brixham for a supermarket and an investment like this would have great benefits for the towns
- The NPPF requires LPAs to apply a sequential test to planning applications for main town centre uses that are not in an existing centre
- No mitigating strategy to address noise and light pollution apart from a sound proof fence. Dot.com delivery vans will need refrigeration units charged at 6 am with deliveries continuing until 11 pm
- Previous buildings on the site have not led to major job creation but to job relocation
- The height of the office buildings should be restricted to two storeys
- People will not want to see a large store at the entrance to Torquay
- Torquay desperately needs employment for its residents and unemployed youth that is not low grade, low paid and part time
- Will turn the town centre into a ghost town
- The local plan states that within that context any development should be in harmony with the Edginswell envelope
- Large retailers may return as little as 5% to the local economy compared with at least 50% of turnover from local retailers returned to the local economy
- Rapid depletion of green areas in this village.

The issues raised in support of the proposal are:

- Compliment the approach to Torquay
- Edginswell is no longer a rural hamlet
- Would provide additional jobs
- Application is sensitive to the area
- Design and layout appears sensitive to its surroundings and a significant amount of landscaping is shown to help screen and soften the impact to the adjacent residential area
- Supports inward investment.

Relevant Planning History

1987/1367 Retail Superstore Development with Car Parking, Access Roads and Petrol Filling Station (In Outline). Refused 4.11.87

1987/2003 Retail Superstore Development with Car Parking and Access Roads (In Outline). Withdrawn.

P/1988/0587 Erection of retail food store, car parking, petrol filling station, access

roads, landscaping and associated works (in outline). Refused 2/9/1988. Subsequent appeal dismissed by letter dated 26.2.90.

- P/2001/0787 (Phase 1) Erection of new building for high tech company for use classes B1 (business) and B8 (Storage/distribution) with vehicular and pedestrian access. Refused 12/4/2002.
- P/2001/0788 (Phase 2) Erection of new buildings for use classes B1 (business) and B8 (storage/distribution) (employment units) and supporting C1 (travel Inn), A3 (food and Drink) and D2 (Leisure uses) with vehicular and pedestrian access (in outline). This is a departure from the Local Plan. Refused 12/4/2002.
- P/2002/0154 Erection of 60 bedroom 'Travel Inn' hotel and integral 'Brewers Fayre' restaurant/public house on lower, ground, first, second and third floors with vehicular/pedestrian access from Edginswell Lane and car parking. Refused 12/4/2002.
- P/2004/0884 Development of business park comprising business uses (B1) and a car show room, associated landscape works, alterations to adjoining highways and car parking (revised scheme to previous refusal). Refused 10/8/2004.
- P/2004/2118 Development of business park comprising business uses (Class B1) and a car showroom, associated landscape works, alterations to adjoining highways and car parking (revised scheme to previous refusal) (In outline). Approved 20/1/2006.
- P/2006/1011 Development of phase 1 of business park comprising mixed use of offices, buildings, infrastructure (class B1 use) with vehicular/pedestrian access. Refused 24/10/2006.
- P/2006/1116 Highway works/associated with planning application P/2004/2118. Approved 26/9/2006.
- P/2007/1743 Mixed use development comprising business use class B1, car showroom, retail warehouse and residential and public house/restaurant (class A3/A4) with associated highway works and car parking (in outline). Approved 6/6/2008.
- 2008/1682 Mixed use development comprising business uses (B1); cafe/restaurant (A3) and specialist renal clinic (D1) with associated landscaping works, car parking and vehicle/pedestrian access. Approved 23.3.09.

Key Issues/Material Considerations

The key issues to be considered are the principle of the proposed uses on the site, the retail impact, the visual impact, highways, impact on neighbours, trees, landscape and ecology, drainage, flood risk and sustainability.

Principle and Planning Policy -

In the Torbay Local Plan 1995-2011 the application site is subject to Policy E1.2B which requires new development to be principally class B1 use (offices and light industrial) with limited B8 use (warehouse and distribution). In the explanation to the policy, clarification reveals that the intention is for the site to be used as a well- designed 'high tech' site.

Under application reference 2007/1743 planning permission was granted on the site for a mix of B1 and non B1 uses. The non B1 uses included a retail warehouse with an additional garden centre area which had a retail floor space of 2144 m² with 140 m² of offices, two car showrooms a pub/restaurant and residential development. In support of this application a report was submitted to look at the possible range of uses that could result in a viable scheme. The report concluded that to develop the site purely for office uses would not result in a viable scheme and as such it was necessary to consider an appropriate level of 'pump priming' to bring the development forward. In the light of this report planning permission was granted for a number of non B1 uses on the site. It should be noted that the approved retail unit was for bulky non food retail, such as a DIY store, and use for bulky non food sales only was controlled by condition.

The proposal, the subject of this application, includes the provision of three office buildings on the site. The principle of constructing these office buildings would be consistent with Policy E1.2B of the Torbay Local Plan 1995-2011, and is therefore not contentious (although there are a number of issues, such as siting that would require further consideration). Two of these office buildings have previously been granted planning permission under application reference 2008/1682MPA. Consequently the main policy issue to be considered is the principle of the proposed 7149m² Tesco store.

The recently introduced National Planning Policy Framework (NPPF) has at its heart a presumption in favour of sustainable development. This is described as a golden thread that should run through decision making. Sustainable development is defined as meeting three key dimensions of achieving an economic role, a social role and an environment role. The economic role is defined as contributing to building a strong, responsive and competitive economy, the social role as supporting strong, vibrant and healthy communities and the environmental role as contributing to protecting and enhancing the natural and built environment. It is advised that these three roles should not be undertaken in isolation, because they are mutually dependent.

Paragraph 22 of the NPPF advises that planning policies "should avoid the long term protection of sites allocated for employment use where there is no prospect

of a site being used for that purpose". It continues that "where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard..... to the need for different land uses to support sustainable local communities".

This principle of taking a flexible approach to development on land allocated for employment purposes is consistent with the Council's earlier approach to previous applications on the site where a mix of uses has been approved to provide "pump priming" for the provision of offices on the site. Furthermore, this is consistent with the approach the Council has taken to other employment allocations in Torbay including policy E1.16 at Yannons Farm and E1.19 at White Rock.

The Council supports the principle of considering alternative uses other than employment, in order to deliver viable development that includes a significant quantum of employment space. However this does not mean that just any alternative use would be appropriate on the site.

In the case of this proposed out of town centre retail development it is appropriate to consider the NPPF guidance on "ensuring the vitality of town centres", as a large out of town store could have an impact on existing town centres. The NPPF advises that Local Planning Authorities should "recognise town centres as the heart of their communities and pursue policies to support their viability and vitality". The most sustainable location for a large retail development is in the town centre because it would encourage economic activity in the town centre and thereby increase its attractiveness through investment and commitment to improving shopping provision. For an application of this size it is necessary for a sequential test to be carried out that assesses the suitability of sites within the town centre and then edge of centre locations for the proposed use, and only if suitable sites cannot be provided in a town centre, district, local centre or edge of centre location should an out of centre site be considered. A retail impact assessment is also required to consider the impact of the proposal on the vitality and viability of existing centres, up to five years from the time the application is made.

The relevant policies in the Torbay Local Plan 1995-2011 to the principle of locating the Tesco store on this site include **Policy E1.2B**, which is discussed above and seeks to restrict the use of the land to B1 and B8 uses and Policy E6.

Policy E6 relates to the retention of employment land. It identifies a number of criteria for considering the change of use or redevelopment of employment land. This policy seeks to retain land allocated for employment purposes unless there are overriding reasons in the public interest to allow the loss of employment land.

Whilst the applicants contend that the store is required to deliver the residual

office accommodation on the site, there is no financial assessment submitted with the application to confirm that this is the case. The site is serviced and there are existing employment uses within it. Furthermore, the site's advantageous location at the gateway to Torquay combined with the forthcoming South Devon Link Road provides substantial opportunity for investment in business uses on this site. Advice from Torbay Development Agency shows that, over the last 12 months, there have been around 150 property enquiries for around 1.2M sq ft of space in Torbay. Consequently, the Council believes the whole site will come forward for employment purposes, in accordance with the Local Plan.

Policy SS sets out the overall shopping strategy for Torbay. It seeks the provision of a comprehensive range of shopping facilities. The town centres are identified as the main focal points. Proposals for new shopping provision should establish that there is a need for the facility which cannot be accommodated within an existing centre. Policy S6 is relevant to retail development outside town and district centres. This policy supports a sequential approach to site selection, identifies the importance of not having a detrimental impact on the vitality and viability of existing shopping centres, requires the site to be accessible by public transport and where the site is allocated for employment use it should have no significant adverse affect on employment opportunities. The Local Plan's approach to retail provision in the Bay is consistent with the National Planning Policy Framework.

The submitted sequential site assessment report argues that in order to enhance consumer choice and bring strong competition to the convenience sector of the market, which is currently dominated by Sainsbury's at the Willows, it is necessary for a new store to compete in terms of accessibility, scale, prominence and car parking. The applicant puts forward a case that the size of the store needs to be comparable to Sainsbury's to provide a competitive choice for consumers. The report suggests that there is a deficiency in the Torbay convenience retail sector, especially in terms of those stores that can provide a main food offer. It makes the point that a proposal that is not comparable with the competition would be unviable. The sequential site assessment is therefore based on the need to provide a minimum site area of 1.87 ha. A number of sites are considered in both Torquay, including the Town Hall Car Park, and Paignton and the report concludes that none are large enough to accommodate the application proposals.

The Council has instructed a retail consultant (GVA Grimley) to provide advice in respect of this scheme. The consultant affirms the officers view that a number of the sites considered by the applicant in relation to the sequential test can indeed be ruled out. However, the consultant advises in line with officers concerns that the weight which can be attached to the applicant's assessment in relation to some of the other larger sites is called into question by the lack of flexibility over the size of store required and the potential for a smaller supermarket to meet the same requirements as the application proposal, but on a more centrally located

site.

The assessment fails to properly consider the Lymington Road car park site at the rear of the Town Hall as a potential town centre superstore site and also fails to appropriately justify ruling out the Victoria Square, Paignton and Union Street, Torquay schemes. The Council considers the Lymington Road site is deliverable in the next 5 years for food retail purposes. Members have instructed the TDA and Council to promote the site.

The retail assessment submitted in support of the application concludes that the “proposal would not significantly impact on the vitality or viability of Torquay town centre”. With regard to convenience (food) sales it is forecast that the proposed development would reduce sales in Torquay town centre by 2.9% and would reduce out of town retail turnover in Torquay by 15%. It is expected that the turnover as the Willows centre would be reduced by 22%. It is noted that even with this impact the Willows centre would be likely to trade at or above company average turnover levels. The impact on Paignton Town Centre is anticipated to be 2% and on Paignton out of town stores 9.3%. The impact on St Marychurch (which includes Waitrose) would be 5.2%. For comparison goods it is estimated that the impact on Torquay town centre would be 1.9%, 3.5% on the Willows Centre and 2% on Paignton.

The NPPF clarifies that impact relates both to investment and to vitality and viability. In this case, the Council’s retail consultants affirm that with the expenditure capacity for only one new supermarket in Torquay in the short to medium term and limited capacity to deliver one new supermarket in Torquay and Paignton, the proposed Tesco could have a detrimental impact on investment. In essence, it is likely that a large format out of town store on the edge of Torquay would cause considerable damage to town centre regeneration efforts.

Consultants further advise that the likely impact of the store on Torquay Town Centre is understated in the applicant’s submission. Due to the cumulative impact of other out of town developments, such as the Asda on the Newton Road and the approved Sainsbury’s extension at Paignton, there is likely to be a demonstrable town centre impact. This is compounded by recent trading performance in Torquay Town Centre, a centre that is feeling the strain of external competition and economic decline.

A number of local centres in the area are also likely to be detrimentally affected by the proposals, a concern that has been overlooked by the applicant in their retail impact assessment.

The full report from the retail consultant will be made available for members to read ahead of the committee meeting.

The Council has adopted guidance on retail policy in the document "Future Retail Development in Torbay - Clarification of Policy" January 2010, which is material to the determination of this application. Providing background information on retail matters is the "Retail Study Update" (September 2011). These documents acknowledge that a thriving retail sector is critical to the economic prosperity of Torbay. Retail has a vital role to play in Torbay, ensuring that people can meet their shopping needs locally as well as acting as a crucial part of the Bay's economy and attraction as a leisure and tourist destination.

In the "Future Retail Development in Torbay" it is recognised that there will be a need for additional convenience and comparison goods floorspace in Torquay. In order to deliver this floorspace a strategy of providing new convenience floorspace alongside town centre provision in identified gap areas through increasing floorspace in existing local centres or as part of new local centres in mixed use schemes such as White Rock Paignton is proposed. The idea behind encouraging new retail development into gap areas is to improve the spatial distribution of retail facilities and to improve accessibility for all residents. The gap areas are identified on the basis of accessibility to shopping facilities. The proposed Tesco store would not be consistent with this gap area strategy because it would result in additional provision in an area not identified as having a retail need and where substantial provision for weekly food shopping (in the form of the Sainsburys and Asda) already exists.

The Torbay Retail Study update, which is part of the evidence base to support the new Local Plan, identifies that vacancies in Torquay town centre are well above the national average. It suggests that there is a need to try and rebalance provision back towards the town centres. However, in respect of convenience goods it is concluded that a balanced scenario where the traditional town centre first approach is blended with the need to meet locational specific needs through the gap areas across Torquay is the most appropriate approach. With regard to comparison goods it is proposed that the majority of additional need should be accommodated within Torquay town centre, however it is recognised that an out of centre retail warehouse location could potentially be acceptable, subject to its impact and a variety of other planning considerations.

Further information on the impact of the proposed development on the town centre will be provided in the consultants report and made available to Members. The key point is that if the proposed additional retail floorspace was provided in a town centre location it would provide considerable additional investment in the town centre and demonstrate a commitment to regeneration of the town centre. This scheme threatens the ability of the town centre to attract the vital investment it clearly needs.

In the retail assessment it is argued that a minimum floor area of 1.87 ha is required to provide a viable store. As stated above the sequential site assessment report concludes that there are no other suitable sites available. A

key point that needs to be explored is whether a smaller sized store would be acceptable. The argument that only a store of comparable size to Sainsburys would be viable is not necessarily sound, and it could be argued that the location of the proposed store at Edginswell compounds the need for a larger store since it is located so close to the existing Sainsburys offer. A smaller, but nonetheless sizeable weekly shopping store would provide competition and the Council is not convinced that such a store would be unviable. If it is accepted that a smaller sized store would be viable then the Lymington Road site could provide an alternative location. This site is deliverable within a 5 year timescale. Within a ten year timescale the site at Union Lane could also be delivered. Both these sites are within the town centre and would constitute sustainable alternative locations.

Design/External Appearance -

Policies BES and BE1 in the Torbay Local Plan 1995-2011 promote positive enhancement of the built environment and require new development to conserve or enhance the built environment, ensuring that the integrity of local character and distinctiveness is protected. The NPPF promotes good design and identifies that “good design is a key aspect of sustainable development”. It is recognised that “securing high quality and inclusive design goes beyond aesthetic considerations” and “should address connections between people and places and the integration of new development into the natural, built and historic environment”.

This site is important in design terms as it is a gateway site and would be the beginning of the built up area of Torquay on the main approach road into the town. The principle industry in Torquay is tourism and it is vitally important that the first arrival point at this tourist destination has a positive visual impact. It is noted that the new South Devon link road will join the existing road network directly opposite this site, resulting in the site being clearly visible from the new road.

The existing ground levels on the site are beneficial to development because the ground levels are lower than surrounding levels on Hamelin Way and Riviera Way. This is beneficial because it reduces the visual impact buildings on the site through reducing their height. The layout allows a landscaped buffer around the majority of the building, although this would only be 6 metres wide along the south western boundary. The current character of the site is landscape dominated as it is located adjacent to open countryside and has mature landscape planting around the perimeter. It is important that these wooded banks are retained to assimilate any new development into the existing landscape and soften the visual impact of new buildings. Additional information on long distance views across the site has recently been submitted and advice from the landscape officer is awaited.

A principle concern is the external detailing and appearance of the proposed

Tesco store. It would have a flat roof with a number of 'windcatchers' projecting above the roofline, and would be predominantly finished in timber and curtain wall glazing. It is difficult to understand how this design would make a positive contribution to local distinctiveness as required in the Council's 'Urban Design Guide'. The external appearance would have little relationship with the recently constructed office buildings on the site, which have distinctive design elements of red/orange coloured mono pitch roofs with white rendered elements. Similarly there appears to be no reference in the design to the distinctive form of predominantly Victorian development in Torquay, the local materials palette or Torquay's setting and role as a prime marine tourist destination.

Good design practice would expect new buildings to respond to their setting and location, to use local materials, building methods and details to enhance local distinctiveness. It is important on this gateway site that a distinctive high quality building is delivered that positively identifies the arrival point in Torquay. The appearance of the proposed Tesco store is bland and utilitarian and lacks reference to its location in Torquay. In this case the proposed Tesco store would fail to make a positive contribution to the appearance, character and quality of the area and as such would be contrary to Policies BES and BE1 in the Torbay Local Plan 1995-2011.

Although the design of the proposed store is considered to be disappointing and below the standard that would be expected on this prominent site, it should be considered that this matter could be addressed subject to agreement with the applicant and could be overcome on this site. The application has not been considered by the Design Review Panel and this would provide an initial starting point for appraising and reviewing the external appearance of the building. With further work on the external appearance of the building it would be possible to design a building in this location that would meet the objectives of Policies BES and BE1 in the Torbay Local Plan 1995-2011.

Planning permission has previously been granted for office buildings 05 and 06. The submitted plans show that building 05 would be dug deeper into the site than previously approved. Elevation plans have been requested to enable a comparison of the design of the building. The siting has moved to the north and the site plan shows the building projecting onto the pavement. This needs to be resolved by the architect before planning permission could be granted. The proposed elevation details for building 06 have been revised. The height of the building has been significantly increased by approximately 3 metres. The design principle of a curved steel roof remains consistent. However the materials palette has changed particularly from zinc standing seam roof to a copper coloured standing seam roof. The ground levels to the east of the site are higher than on the site and therefore the increase in the height of the proposed building would not be harmful to the amenity of the area. As the principle of this form of design has previously been accepted there is no particular issue with the external appearance of the building.

Submitted in outline is a proposal for a three storey office building close to the entrance to the site. Only a site plan and proposed section have been submitted. Design is a reserved matter. The key issues to be considered at this stage are the principle of siting an office building in this location and the proposed scale of the building, particularly whether a three storey building in this location would be acceptable.

Highways -

The application includes a number of improvements to the highway network, particularly widening of Newton Road up to the junction with Riviera Way, a new roundabout junction at Orchard Way/Edginswell Lane and a bus turnaround and lay-by including a bus shelter within the site.

A transport assessment has been submitted in support of the application. Officers do not agree with the data used by the applicant to project trip generation levels and is concerned that the projected trip generation significantly underestimates the level of trips likely to be generated on the local network. In addition the modelling work that has been carried out is based on survey data collected in July 2010 which was before ASDA, Dunelm and the Outlet stores all opened and therefore is now out of date. Officers have asked the applicant to revise their data, but Tesco has declined to do so and instead have focused on providing a justification for the submitted data. Officers take the view that the results of the traffic assessments appear to underestimate the impact on the junction of Newton Road and Riviera Way. As submitted the Transport Assessment (TA) indicates that with the proposed development this junction would operate within capacity. However if as suggested the trip generation rates are unrealistic and too low there is the potential that an increase in trip generation rates would result in the junction operating above capacity during peak periods.

Other shortcomings in the Transport Assessment including:

a) the South Devon Link Road not being included in the baseline assessment. The Transport Assessment asserts that only a small proportion of 'new' traffic will use the bypass, however given the convenient location of the proposed store there is the potential for a significant proportion of customers to travel along the South Devon Link Road from the Newton Abbot direction. The flow of traffic along Riviera Way will need to be assessed to ensure it is not affected by additional turning movements at the Newton Road junction.

b) no details of the level of servicing and delivery trips generated by the store have been submitted. Further information about the number and timing of HGVs and dot.com vans for internet shopping is required.

c) the proposal includes the widening of Newton Road up to the junction with Riviera Way, however, further road improvements would also be needed to provide the additional capacity required for this development, this includes extending the length of the right hand turn lane on Riviera Way.

- d) there should be a commitment to implementing the suggested local traffic calming.
- e) the framework travel plan referred to in the Transport Assessment should be submitted and:
- f) no reference is made to the proximity of the site to Torbay Hospital. Newton Road is one of the main routes to the hospital for emergency vehicles and therefore needs to be kept free of congestion
- g) additional provision should be made for traffic accessing the site as well as egressing. In addition Officers consider the proposed roundabout junction would not be appropriate in scale for a minor road and a staggered priority junction would be preferable.

The proposal would provide 371 parking spaces to serve the Tesco store, of which 20 would be for disabled persons and 18 designated for parent and child use. 71 spaces would be provided to serve the office development of which 8 would be for disabled persons and 46 cycle parking spaces would be provided close to the Tesco store. This level of parking provision is considered to be acceptable to serve the proposed development and in line with policy.

The proposed parking area to serve Sarritor House, the office building submitted in outline, would involve the removal of a public footpath into the site which is adopted highway. A stopping up order would be required to close this footpath, which is well used by pedestrians accessing the existing office development and open space. It is disappointing that such a route has not been reinstated within the proposed scheme to improve access to the development for pedestrians approaching from the north.

Should planning permission be granted a S106 contribution would be required to mitigate the impact of the proposed development on local infrastructure. It is suggested that this could be spent in part on extending the existing bus route capacity into the site. In addition the Council has aspirations to build a new station at Edginswell to provide local rail links to the hospital and employment areas. This would have the potential to be used by staff and therefore it would be appropriate for a contribution to be made towards this project. In addition a contribution would be used to improve cycle links in the area.

Impact on neighbours -

The proposed Tesco store would be sited close to the boundary with a number of properties in Edginswell to the south west of the site. There is an approximate 8-10 metre difference in ground levels between these properties and the site of the proposed store. It is proposed to construct a new retaining wall close to the site boundary between the two levels as part of the application. It is noted that the service area which is approximately 30 metres from the nearest dwellings would be raised to the floor level of the store, which would be nearly 4 metres above the parking level of the store. The layout plan notes that there would be acoustic fences around the service yard and access ramp. Because of the difference in

ground levels there would be a line of sight from adjacent dwellings to the service area.

In support of the application an acoustic report has been submitted to assess the impact of the proposed development on local residents. The report is based on a worst case scenario of the store operating on a 24 hour basis. It is proposed that a delivery management plan should be implemented to minimise noise emissions from servicing of the store, particularly in the early morning. Conditions are also recommended for details of plant such as refrigeration, condenser units, air handling units etc to be submitted in order to control noise output and to agree noise amelioration measures and management during construction. The report concludes the following a) that the changes in traffic noise would be “imperceptible and therefore of negligible impact”, b) there would not be a noticeable detrimental effect on the noise climate during the day and c) at night time during the peak hour of activity the guidelines would be exceeded by up to 4 dB at the nearest property, however, this would be below existing peaks for noise at night and would not exceed the existing peak or ambient noise climate from 0600 hours. In the light of this final point it is recommended that delivery hours should be specifically agreed with the Local Planning Authority. The Council’s Environmental Health Officer has been consulted on the proposal and her consultation response is awaited.

It is noted that the acoustic report has only assessed the impact of the proposed development on properties in Edginswell village and no consideration has been made on the impact on properties in Edginswell Close, which are close to the access to the site and therefore have the potential to be affected by HGV movements into and out of the site. Particularly as the new roundabout would be close to these properties and would result in HGVs having to stop and start in navigating the roundabout.

Local residents have also expressed concern about the dot com vans that have to run their refrigeration units for an hour at the beginning of the day. This is likely to commence at 6am.

Trees and Landscape -

A Landscape and Visual Assessment has been submitted in support of the application. In addition a document with further long distance views across the site has been submitted. The Landscape and Visual Assessment notes that the vegetation on the site is predominantly rough grassland and scrub. There is a small copse of tree planting in the western corner of the site. Similar clusters of small groups of trees are located on the north eastern boundary, associated with the watercourse that runs parallel between the northern site boundary and the railway. There is an attenuation pond in the centre of the site that connects to the watercourse via a ditch running in a northerly direction. This pond forms part of the SUDs scheme associated with the existing business park.

Within the Landscape Character Assessment of Torbay, May 2010, the site is identified as located within the Landscape Character Type 3B: Secluded Valley. The assessment identifies that this area is characterised by steep valley landforms with narrow valley floors. This forms a secluded character due to the enclosing topography and complex network of narrow sunken lanes enclosed by high hedge banks which contain views across fields and out to the surrounding landscape. The area is identified as being settled with the buildings and settlements displaying a variety of sizes, ages and styles. The Landscape and Visual Assessment identifies that the site is characterised by a number of urbanising elements which create an urban fringe nature. These are said to consist of the road and railway corridors to the north and west which form robust, defensible edges to the site and create a degree of separation from the wider rural setting. The existing commercial buildings on the site, which provide a larger scale, contemporary built form being located within the immediate setting of the application site. The existing built edge to the east and south, which is located on the rising landform of the valley and ensures that the presence of the built form characterises the site.

It is argued in the Landscape and Visual Assessment that the site's topography and its situation within the lower region of the valley, surrounded by three ridgelines reinforces the degree of localised visual containment. The combination of the localised vegetation and topography compartmentalises the site from the wider landscape. It is concluded that the visual environment within which the site is set has the capacity to accommodate a degree of change, which would have a limited effect on the localised and wider visual environment.

Detailed planting plans are submitted as part of the application and details of groups of trees that would be felled along with indicative indications of tree protection fencing. The landscape treatment proposed includes:

- Retention of the existing treescape along the south western boundary
- Retention of other existing trees located close to boundary lines, and their reinforcement by additional native tree planting that will be under planted with native shrubs
- Planting of trees and ornamental shrubs to the frontage of the Tesco store and associated car park
- Creation of an area of wildflower meadow to the east of the car park
- Planting of native wetland tolerant tree species and marginal planting surrounding the pond and ditch.

Both the Landscape and Arboricultural Officers consultation responses are awaited. A key consideration will be an assessment of the magnitude of change between the consented scheme and the current proposal. It will be necessary to assess whether the proposed development can be integrated into the landscape setting without detriment within the wider receiving environment. The scale of the proposed Tesco store is significantly larger than the previously approved

buildings on the site, which comprised smaller scale office, retail and car showrooms, with greater space around the buildings. Consequently the impact in views across the site and from long distance views would be to increase the urban character of the site through the increased scale of development that is now proposed. This scale of building would also reduce scope for a more characteristic urban/rural fringe form of development, such as exists in the business park with buildings set in a strong landscape.

Policy L10 in the Torbay Local Plan 1995-2011 requires necessary mitigation measures to be provided to minimise damage to the landscape and for landscaping measures to form an integral part of the development to reflect the character of the local landscape. As this site is located on the edge of the urban area it is important that a robust strategic landscape scheme is provided to assimilate new development on the site into the distinctive landscape in the area. This scheme should respect the existing landscape character of the site as described above.

It is noted that the site area does not extend to the boundary with Hamelin Way and Riviera Way. Land to the north east of the site to the boundary with Hamelin Way forms an important landscape buffer to the site and is within the Council's ownership. In order to provide a green edge and soften the impact of the proposed development into the landscape it would be appropriate to seek a contribution from the developer for additional strategic planting on this land and for long term maintenance.

Drainage and Flood Risk -

The NPPF advises that "when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere".

A Flood Risk assessment has been submitted in support of the application which indicates how flood risk and disposal of surface water would be managed on the site. The Flood Risk Assessment effectively determines that the site is located in Flood Zone 1 and therefore has a low probability of flooding. The application site consists of undeveloped land and therefore the proposed development will increase the site's impermeable area and will require attenuation to reduce the surface water run off rate. To achieve sustainable run off rates it is proposed to use:

- a) an attenuation pond to collect and store rainwater and:
- b) an underground Geolight cellular storage system located underneath the car park.

The Environment Agency has advised that there is no objection in principle to the proposed development, however, a number of issues are raised which require further work before planning permission could be granted. These include a request for a Surface Water Drainage Strategy Drawing, provision of an access route between the proposed stores access road and the floodplain of the

Edginswell Stream/Aller Brook, and the siting of the proposed Sarritor House needs to be reviewed as it is shown within a required 7 metre buffer to the Edginswell Stream/Aller Brook. This is an important flood defence outflow structure and compromising this could have implications for flood risk to residential properties in Newton Road. The agent has been requested to submit this additional information.

Ecology -

The NPPF requires Local Authorities when determining planning applications to aim to “conserve and enhance biodiversity”. An ecological survey has been submitted in support of the application. It is noted that there are no statutory nature conservation designations within or adjacent to the study area. The South Hams Special Area of Conservation (SAC) is located within the vicinity of the site. There are a number of Other Sites of Wildlife Interest (OSWI) identified within and adjacent to the study area. It is concluded in the report that the proposals will not result in any “likely significant effects” on the important features of the SAC and that there is no evidence to suggest that the proposed development would lead to any significant effects on any known protected species or ecological features of value at the national, county or local level.

The Ecological Assessment found the majority of the site to comprise rank grassland, tall herb vegetation, bramble and bare/recolonising ground, which supported a limited range of common species and was of overall low to negligible ecological value. The following recommendations are made in the report;

- Suitable safeguards to be put in place to protect offsite watercourse and associated corridor
- Construction safeguards and protective fencing installed to prevent damage to retained habitats (particularly the pond, drainage channel and boundary vegetation)
- New landscaping to incorporate enhancement measures using native planting
- Suitable measures to be put in place to eradicate Japanese Knotweed
- New lighting scheme designed to avoid additional light spill into the offsite watercourse corridor and maintain dark corridors for wildlife movement
- Mitigation measures in respect of reptile species (Slow Worm)
- Bird sensitive timing of vegetation clearance
- New bat and bird boxes attached to new buildings and/or retained trees within the study area.

Natural England (NE) has commented on the proposed development and has not raised an objection. Their consultation response advises that the ecological report should take into account the fact that the site lies at the extremity of a wider corridor of land identified as of potential strategic significance as a flyway for great horseshoe bats, associated with the South Hams SAC. NE also recommend that the landscaping associated with the development includes the

creation and maintenance of new habitat suitable for commuting and/or foraging greater horseshoe bats e.g. native broadleaved planting that are not affected by artificial illumination at night.

The Ecological Assessment identifies the broad principles needed to ensure that the proposed development would not have an adverse affect on biodiversity. The precise detail of the measures identified in the recommendations above would need to be addressed by means of conditions, for example, e.g. it is suggested that bat and bird boxes be provided but no specification, number or location of these boxes is provided.

Environmental Sustainability -

At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development which, it states, should be seen as a golden thread running through both plan making and decision taking. One of the twelve core principles in the NPPF is to “support the transition to a low carbon future in a changing climate”.

An Environmental Sustainability Statement is submitted in support of the application. This identifies that Tesco has committed to be on the path to be a low carbon business by 2020 and a zero carbon business by 2050. Tesco have carried out an extensive design and specification review trialling many new technologies. In the proposed store it is proposed that the following measures would be incorporated:

- Enhanced building fabric and energy specific efficient specification
- Incorporation of wind catchers and roof lights
- Drainage strategy that incorporates SUDS
- Potable water minimisation equipment
- Diverting of all store waste from landfill
- Incorporation of materials with a low environmental impact
- Incorporation of public transport and cyclist facilities
- Enhancement of the sites biodiversity value.

It is advised that there is a time lag between the submission of a planning application and commencement on site. Technologies have changed and advanced considerably over recent years and their improvements appear to be ongoing. In accordance with best practice, a technology review would take place prior to commencement on site so that the most appropriate equipment at the time can be utilised. This point is reasonable, however it is disappointing that there is no commitment to achieving a nationally recognised target such as BREEAM in the development. In order to ensure the proposed development incorporates the many sustainable initiatives as identified in the report (or suitable alternatives) it would be appropriate to impose a condition requiring this information to be submitted prior to the commencement of development.

Other matters raised by Consultees -

Further information in respect of Archaeology and drainage for Network Rail has been requested and remains outstanding.

An Air Quality Assessment has been submitted in support of the application and this concludes that the “development is not predicted to lead to the designation of, or the extension to, an Air Quality Management Area (AQMA)”. It is noted that this report has not taken into account the impact on the Kingskerswell AQMA which is close to the application site. The Environmental Health Officer’s comments on the report are awaited.

Economy -

The NPPF recognises that sustainable development contributes to building a strong, responsive and competitive economy. In the Planning Statement it is advised that the proposed development would create approximately 130 B1 office jobs and 200 jobs in the food store. This level of employment would evidently make a difference to the economy in Torbay, especially if these jobs were new jobs in the Bay. However the proposal should not be considered on the principle of job creation alone and the broader economic impact on the whole of Torbay, the social impact and the environmental impact are material considerations in the determination of the application.

The issue of the impact of the proposal on the town centre is addressed above and further advice is contained in the consultants report. The applicant suggests that the proposed Tesco store would result in loss of trade to a number of other stores. It is likely that this loss could result in a reduction of jobs in competitors stores, and therefore the net number of additional jobs created is likely to be less than the figures stated above.

The use of the site by Tesco would reduce the amount of space available for office development. It is noted that a non food retail use and car showrooms have previously been granted planning permission on the site, however, since these previous consents there has been a material change in circumstances in that the South Devon Link Road (SDLR) has been approved and will be implemented.

The proximity of the application site to the SDLR means that it would be easily accessible and a prominent location which would be likely to increase its attractiveness for office use. The type of jobs that would be created by the retail element of the proposal would be predominantly part time, low paid with limited opportunities for personal development and advancement. In contrast office jobs are likely to require a higher skilled workforce and would provide higher value, which would have an indirect positive effect on the economy of Torbay. Using simple floor space : jobs ratio of the proposed development, it can be calculated that the Tesco store generates approximately 1 job per 400 sq ft, whilst the proposed office space generates 1 job per 230 sq ft. As such the quantity of jobs,

as well as the quality, is likely to be much greater through provision of B1 type space on the site than via food retail.

S106/CIL -

Section 122 of the Community Infrastructure Levy Regulations requires planning obligations to meet the following tests:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

The provisions of these tests would need to be met in respect of any financial contributions sought for the decision to be legal.

In accordance with the SPD "Planning Contributions and Affordable Housing: Priorities and Delivery" the following S106 contributions would be applicable:

Sustainable Transport	
Tesco	£2,819,842
Office Development	£ 150,436
TOTAL	£2,970,278

These figures represent the starting point for calculating the contribution. It would only be lawful to request a contribution towards specific costed projects that are necessary to make the development work. This sum is likely to be less than the above calculation.

A contribution to offset the impact on the Town Centre would need to be calculated following receipt of additional information in the retail consultants report.

Offsite landscape works and maintenance would also form part of the s106 provisions.

Mitigation for the number of jobs that are created by the development would need to be applied to the above figures and this amounts to a mitigation figure of £845,900.

Conclusions

In conclusion, there is no objection to the principle of the three proposed office buildings on the site.

With regard to the retail element of the application the Local Planning Authority does not accept the conclusion of the submitted sequential test. In the opinion of the Local Planning Authority there are suitable sites available within the town

centre to deliver the proposed store. The proposed development would fail to ensure the vitality of the town centre and as such would be contrary to the objectives of para 23 of the NPPF.

Condition(s)/Reason(s)

01. The proposed 7149m² food retail store would be located on land designated for employment use in the Torbay Local Plan 1995-2011 and consequently would result in the loss of a 2.45 ha of serviced land that is available and highly suitable for employment use. Retention of the site for employment use accords with paragraph 21 in the NPPF, which seeks to promote investment in business. Accessibility to and prominence of, in commercial terms, the site will be significantly improved with delivery of the South Devon Link Road and this will increase the likelihood of an employment use being delivered on the site, given its prominent location at the entrance gateway to Torquay. The Authority is not convinced that a store of the proposed size is required to pump prime the remaining employment area. Loss of the site for employment purposes would result in the loss of opportunity to secure economic growth through the creation of jobs and prosperity in a struggling economically deprived area, characterised by seasonal low paid employment and as such would be contrary to Policies E1.2(B) and E6 in the Torbay Local Plan 1995-2011.

02. The submitted Sequential Site Assessment Report has failed to demonstrate that the applicant has complied with the requirements of paragraphs 24 and 27 of the National Planning Policy Framework and Policies SS and S6 of the Torbay Local Plan 1995-2011 in respect of the sequential approach. The applicant has failed to demonstrate that the town centre options have been thoroughly assessed as sequentially preferable alternatives to the application site. Furthermore, the applicant has not shown sufficient flexibility in relation to the site size and form such that appropriate alternatives have not been given due consideration. Council believes there are opportunity with Torquay and Paignton town centres which can meet the same needs of retail elements of the proposed development. In the event that the sequential test is achieved in this case, the Council has a retail strategy based on gap area analysis that determines that the application site would not be spatially preferable in any event.

03. The Retail Assessment fails to accurately assess the impact of the proposed retail store on the Torquay town centre and Paignton town centre, district centres and local centres. The proposed development by virtue of the inclusion of the retail store would have an adverse impact on investment in, and the vitality and viability of, Torquay Town Centre which would consequently have a detrimental effect on trade/turnover in the town centre, contrary to paragraphs 26, 27 of the NPPF and Policies SS and S6 of the Torbay Local Plan 1995-2011. The applicant has failed to prove that material considerations exist that warrant

approval of the application proposals contrary to these policies. Furthermore, the development would have a detrimental impact on other existing Town, local and district centres and the Council does not consider that the evidence submitted in relation to the retail impact assessment is robust.

04. The external appearance of the food retail store fails to meet the objectives of Policies BES and BE1 in the Torbay Local Plan 1995-2011 and paragraphs 60 and 64 of the NPPF that seek to ensure new development will positively enhance the built environment, ensuring that the integrity of local character and distinctiveness is protected. The proposed building lacks reference to the established built form and character of its setting in Torquay in terms of design, materials and quality of landscape provision and as such would fail to provide a high standard of development that would be fully integrated into the natural, built and historic environment in this very prominent gateway site that has a significant role as the arrival point to a major tourist destination. The bulk and scale of the building proposed would be prominent in this gateway location and run contrary to the prevailing urban fringe approach that has been taken to the existing development at the business park.

05. The applicant has failed to demonstrate that the traffic generated by the proposed development could be satisfactorily accommodated on the highway network by reason of inadequate assessment of likely traffic generation. As such the traffic arising from the proposed development would have a significant adverse impact on highway safety, capacity and free flow of traffic on the surrounding highway network. In addition the applicant has also failed to demonstrate that the proposed mitigation measures would adequately offset the potential increase in demand. The proposal is therefore contrary to Policy T26 in the Torbay Local Plan 1995-2011.

06. The applicant has failed to satisfy the sustainability aims of Policy CF6 and the Council's SPD "Planning Contributions and Affordable Housing: Priorities and Delivery" to secure the delivery of physical, social and community infrastructure necessary to make the development acceptable in planner terms and directly related to the proposal, by failing to secure planning obligations under Section 106 of the Town and Country Act 1990 (as amended). The Local Planning Authority considers that it would be inappropriate to secure the required obligations and contributions by any method other than a legal agreement and the proposal is therefore contrary to Policy CF6 of the Torbay Local Plan 1995-2011 and paragraph 206 of the NPPF.

Relevant Policies

-



Planning Officer Report

Application Number

P/2011/0991

Site Address

27 - 29 Walnut Road
Torquay
Devon
TQ2 6HP

Case Officer

Mr Alexis Moran

Ward

Cockington With Chelston

Description

Change of use to create a single unit to provide sheltered housing accommodation with warden services for vulnerable adults (Re advertisement)

Executive Summary/Key Outcomes

The application seeks permission to amalgamate the planning status of 27 & 29 Walnut Road to create a single planning unit which provides warden-controlled sheltered housing for people with learning difficulties and mental health support needs.

At present both units offer a similar facility but act under differing planning permissions, the unity of the two, under one permission, will allow the same services to be provided on either part of the Site and will provide the Local Planning Authority with a single permission to monitor and control.

The proposal complies with the requirements of policy CF15 (accommodation for people in need of care) of the saved adopted Torbay Local Plan 1995-2011 as the property is within easy walking distance of local shops, the local community and public transport. There is no over-concentration of similar facilities in the immediate area and the availability of a warden ensures that there is appropriate care for the occupiers of the units.

The application is considered to be acceptable for conditional planning approval subject to the completion of a section 106 agreement.

Recommendation

Conditional Approval

Site Details

27 & 29 Walnut Road, Torquay ('the Site'), is a pair of semi -detached buildings at the junction of Walnut Road and Old Mill Road.

Detailed Proposals

The application seeks permission to change the use of the Site to form a single planning unit to provide warden-controlled sheltered housing for 'Vulnerable Adults' and an administration office. Consent would unify the facilities currently in use on the Site which presently consists of sheltered housing units operated under separate planning permissions but as part of the same business

The application also seeks to vary condition 2 of planning permission P/2005/1383/PA (which relates to 27 Walnut Road alone) which states

"The occupation of the property shall be limited solely to persons referred by (Torbay Council Adult Social Services) as being a person with a learning disability in need of support in the community or a person employed as a warden/supervisor for such persons who occupy the property, unless otherwise agreed in writing with the Local Planning Authority."

in order to allow that persons referred by Torbay Council Adult Social Services as being a person with a learning disability and/or mental health support needs and being in need of support in the community to be accommodated in either part of the Site, rather than only at number 29.

Summary Of Consultation Responses

None

Summary Of Representations

Four letters of representation have been received. One of which considers that the proposal results in an "over saturation" of such uses in the area. Other comments brought up in the representations related to the backgrounds of the likely occupiers.

Because of concerns raised a meeting was held between representatives of the local community, the applicant and Torbay Adult Services. At that meeting representatives of the applicant and Torbay Adult Services clarified the type of client that the Site would accommodate and the measures that would continue to be utilised to ensure that the use of the Site did not cause unnecessary disruption to local residents.

The letters of representation, which were received after the last committee meeting, are not considered to raise any new material planning considerations which would alter the recommendation previously given to the committee. The

concerns raised in the letters of representation and at the meeting with the applicant can be overcome by the addition of suitable planning conditions and conditions within the section 106 legal agreement. These are re-produced at Page T.202.

A draft section 106 agreement will be added to this application as a late representation and therefore will be available to members of the Development Services Committee on the day of the meeting.

Relevant Planning History

- P/2005/1383/PA Conversion of Dwelling Into 6 Self-Contained Flatlets (Sheltered Housing For Persons With Learning Difficulties) With Warden Based At No 29. Approved by committee 26.09.2005
- P/2003/1115/PA Conversion of dwelling into 6 self-contained flatlets (Sheltered Housing for persons with learning difficulties) with warden based in number 29 Walnut Road. Refused 25/7/05.
- P/2002/0978/PA 29 Walnut Road. 5 flatlets (sheltered housing for persons with learning difficulties and warden's accommodation). Approved 14/8/2002.

Key Issues/Material Considerations

The key planning issues this application is required to comply with relate to policy CF15 (Accommodation for people in need of care) of the saved adopted Torbay Local Plan 1995-2011.

Policy CF 15 requires an application to meet certain criteria, the most relevant of which are listed below,

- premises are well related to the local residential community, accessible to public transport and within walking distance of local shops and other everyday facilities;
- there is adequate amenity space within schemes, having due regard to the character of the surrounding area, together with appropriate landscaping to ensure attractive surroundings for residents;
- there is appropriate provision for service vehicles and car parking in accordance with Local Authority standards;
- the development or change of use would not lead to an over-concentration of uses within the area and would not be to the detriment of the character or amenities of the neighbourhood;

- appropriate accommodation is provided for staff whether on site or with direct communication with residents, to ensure that there is proper care for occupants.

The application site is within easy walking distance of local shops, the local community and public transport. It is understood that there are approximately 4 similar sheltered housing facilities within a mile of the Site; as such there cannot be considered to be an over-concentration of similar uses in the immediate area. The availability of a warden ensures that there is appropriate care for the occupiers of the units. The proposal is therefore considered to comply with this policy.

The amalgamation of the two units to one will provide a more controlled planning unit and one which can provide the same facilities for people of similar needs; at present this is not the case.

The removal of the condition would allow the applicant to accommodate people with mental health support needs as well as those with learning difficulties in number 27 as well as number 29. This would allow the Site to be used more efficiently and allow the applicant to provide an improved service.

The applicant has installed a CCTV system in both numbers 27 and 29 to enable a warden to monitor the comings and goings in both parts of the building. It is however considered that a condition to maintain the CCTV and to ensure that it covers both properties should be added to approval.

The Supporting People team consider the applicant SILS to be a well managed provider.

At present a section 106 legal agreement is in place to ensure that:

1. A person employed as a warden/supervisor for the facility shall be on duty at 27 & 29 Wall Nut Road at all times
2. The occupancy of 29 Walnut Road shall be limited to persons referred by Torbay Adult Services as someone with a learning difficulty in need of support in the community or a person employed as a warden/supervisor for such occupants of the property
3. The applicant shall not sell, lease or otherwise dispose of either 27 or 29 Walnut Road separately from the other and shall maintain ownership and management of the two properties as one facility at all times.

As part of the application a revised/new section 106 legal agreement will be required to ensure that..,

1. A person employed as a warden/supervisor for the facility shall be accessible to 27 & 29 Wall Nut Road at all times

2. The occupancy of 27 & 29 Walnut Road shall be limited to persons referred by Torbay Adult Services as somebody classified as a 'Vulnerable Adult'. 'Vulnerable Adult' is to be defined as a person:

a. over the age of 18

b. with a learning disability and/or mental health support needs, in need of support in the community to meet their everyday living needs. This includes disabled people who have physical or sensory impairments, learning difficulties who experience mental illness or distress, frail older people, or people who for any other reason are unable to care for or protect themselves; and

c. who has a local connection with Torbay.

For the avoidance of doubt 'Vulnerable Person' will not include persons referred on the basis of substance dependency and/or criminal offending alone

3. The applicant shall not sell, lease or otherwise dispose of either 27 or 29 Walnut Road separately from the other and shall maintain ownership and management of the two properties as one facility at all times.

This will unify the properties in planning terms and allow consistency in terms of the service provided and in terms of the occupants who can be accommodated in either part of the Site.

Principle and Planning Policy -

CF15 Accommodation for people in need of care

CF2 Crime Prevention

Closing the gap -

The proposed development provides a much needed facility for the community, improving social mobility, reducing dependency and working towards reducing anti-social behaviour.

Conclusions

The proposals are considered to be appropriate for conditional planning approval, having regard to all national and local planning policies and all other relevant material considerations and subject to the provision of a section 106 legal agreement.

Condition(s) / Reason(s)

01. A CCTV system that monitors activities in public areas both inside and immediately outside both numbers 27 and 29 Walnut Road (including facilities for

recording) shall be permanently maintained at the property.

Reason: to ensure security for residents with special needs and prevent behaviour which may have a disruptive effect on the surrounding area in accordance with Policy CF2 of the Torbay Local Plan 1995-2011

02. A person employed as a warden/supervisor for the facility shall be available either on the Site or via telephone

Reason: to ensure proper care and security for the occupants of the development and prevent behaviour which may have a disruptive effect on the surrounding area in accordance with Policy CF2 of the Torbay Local Plan 1995-2011

03. The occupancy of 27 and 29 Walnut Road shall be limited to persons referred by Torbay Adult Services as somebody classified as a vulnerable adult being a person with a learning disability and/or mental health support needs and with need of support in the community.

Reason: to prevent behaviour which may have a disruptive effect on the surrounding area in accordance with Policy CF2 of the Torbay Local Plan 1995-2011

Informative(s)

01. Town and Country Planning (General Development Procedure) (Amendment) Order 2003.

The proposed development has been tested against the following policies of the Development Plan and, in the opinion of the Local Planning Authority, is not in conflict with the following policies:

CF15 Accommodation for people in need of care
CF2 Crime Prevention

Approved Plans

OS Map/Site Location - 1153-101 (Received 27/04/12) - (Version A)

Refused Plans

Relevant Policies

CF2 Crime prevention

CF15 Accommodation for people in need of care

THE COUNCIL OF THE
BOROUGH OF TORBAY

- and -

PETER JAMES KIMBER and
BARBARA ELIZABETH KIMBER

- and -

ABBEY NATIONAL PLC

A G R E E M E N T

under Section 106 of the
Town & Country Planning Act 1990
relating to
29 Walnut Road
Chelston
Torquay
in the Borough of Torbay

ELIZABETH RAIKES
CHIEF EXECUTIVE
Torbay Council
Town Hall
TORQUAY

BETWEEN:

THE COUNCIL OF THE BOROUGH OF TORBAY of Town Hall Castle Circus Torquay Devon TQ1 3DR ("the Council") (1) **PETER JAMES KIMBER** and **BARBARA ELIZABETH KIMBER** both of Belton Lodge Bistern Close Burley Hampshire BH24 4AY ("the Owner") (2) and ("the Mortgagee") (3)

WHEREAS :-

1. The Council is the Local Planning Authority for the purposes of the 1990 Act for the area which includes the Site
2. The Owner has by the Application applied to the Council for Planning Permission for the Development
3. The Owner is the registered proprietor with Title Absolute under Title Numbers DN438063 and DN228561 of the Site subject to the entries disclosed on the Charges Register of the said Title but otherwise free from incumbrances
4. The Mortgagee is Mortgagee of the Land under Legal Charge/Mortgage by demand dated and made between the Owner and the Mortgagee
5. The Council in exercise of its powers under the 1990 Act has resolved to grant Planning Permission for the Development subject to the conditions contained in the draft Planning Permission attached hereto and subject to completion of this Agreement which the Council considers is necessary for the satisfactory development of the Site
6. This Agreement is conditional upon the matters hereinafter referred to

NOW THIS DEED WITNESSETH as follows:

1. In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-
 - 1.1 **"the 1990 Act"** means the Town & Country Planning Act 1990
 - 1.2 **"the Application"** means an application made by the Owner for the Development and registered by the Council on 17th September 2011 with number P/2011/0991
 - 1.3 **"Commencement of Development"** means the carrying out on the Site of any material operation pursuant to the Planning Permission and "material operation" shall have the meaning given to it under Section 56 subsection 4(a) to (e) of the 1990 Act PROVIDED THAT for the avoidance of doubt the Development shall not be deemed to have been commenced by the carrying out of any survey sampling inspections or remediation works or archaeological works or demolition or site clearances or site preparation or

work involving the diversion of services on site or soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of works on the Development and "Commencement of the Development" shall be construed accordingly

- 1.4 **"The Council"** and **"the Owner"** respectively includes their successors and assigns
- 1.5 **"the Development"** means change of use to create a single unit to provide sheltered housing accommodation with warden services for vulnerable adults
- 1.6 **"Eligible Person"** means either
- 1.6.1 A person referred by Torbay Council Adult Services
- (a) being over the age of 18
 - (b) with a learning disability and/or mental health support needs, in need of support in the community to meet their everyday living needs. This includes disabled people who have physical or sensory impairments, learning difficulties who experience mental illness or distress, frail older people, or people who for any other reason are unable to care for or protect themselves; and
 - (c) who have a Local Connection with Torbay.
- For the avoidance of doubt 'Eligible Person' will not include persons referred on the basis of substance dependency and/or criminal offending alone
- 1.6.2 A Warden/Supervisor
- 1.7 **"Local Connection"** means a person who is considered to have a local connection with Torbay in accordance with the criteria set out in section 5 of the "Torbay Supporting People Local Connection and Reconnections Guidelines"
- 1.8 **"the Planning Permission"** means the planning permission in the form of the draft annexed hereto granted by the Council pursuant to the Application and the expression Planning Permission shall include all approvals granted thereunder
- 1.9 **"the Site"** means the land at 27 & 29 Walnut Road Torquay shown edged red on the attached plan
- 1.10 **"Warden/Supervisor"** means a person employed by the Owner whose job it is inter alia to supervise the activities and ensure the safety of residents of the Site

2. Construction of this Agreement

- 2.1 Where in this Agreement reference is made to clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successor(s) to its statutory functions.

3. Legal Basis

- 3.1 This Agreement is made pursuant to Section 106 of the 1990 Act
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Agreement create planning obligations pursuant to section 106 of the Act and are enforceable by the Council as local planning authority against the Owner

4. Conditionality

- 4.1 The Covenants contained in this Agreement are conditional and shall take effect only upon the grant of the Planning Permission save for the provisions of Clause 6.1 (Legal Costs) and paragraph 1 of Schedule 1 which shall come into effect immediately on completion of this Agreement
- 4.2 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by statutory procedure or expires before the Commencement of Development

5. Owner's Covenants

The Owner hereby covenants with the Council to observe and perform the following

- 5.1 To ensure that a Warden/Supervisor is available to assist the residents of the Site at all times and if not resident on-site is not more than 15 minutes travelling time away while on duty.
- 5.2 To ensure that the Site is occupied only by Eligible Persons
- 5.3 Other than assured shorthold tenancies to Eligible Persons not to sell lease or otherwise dispose of either 27 or 29 Walnut Road or any part thereof separately from the remainder of the Site and to maintain ownership and management of the Site as one facility at all times

6. General

- 6.1 Upon the completion of this Agreement the Owner shall pay the Council's reasonable legal costs incurred in the negotiation, preparation and execution of this Agreement
- 6.2 Neither the Owner nor his successors in title shall be liable for any breach of this Agreement unless they hold an interest in the Site in respect of which such breach occurs or held such an interest at the date of such breach
- 6.3 A person who is not a party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms other than the parties to it under that Act
- 6.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than as specified in the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 6.5 This Agreement is a Local Land Charge and shall be registered as such
- 6.6 The Council will upon the written request of the Owner at any time after the obligations of the Owner under this Agreement have been fulfilled issue written confirmation thereof and thereafter cancel all related entries in the Register of Local Land Charges
- 6.7 Nothing in this Agreement is or amounts to or shall be construed as a Planning Permission or approval
- 6.8 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement

7. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

8. Mortgagee's Consent

The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as if it were the person deriving title from the Owner

IN WITNESS whereof the parties hereto have executed this document as a deed the day and year first before written

EXECUTED AS A DEED by affixing)
THE COMMON SEAL OF)
THE COUNCIL OF THE BOROUGH OF TORBAY)
in the presence of :-)

Proper Officer
and Authorised Signatory

SIGNED AS A DEED by the said)
PETER JAMES KIMBER in the presence of:-)

Witness signature

Witness name (BLOCK CAPITALS)

SIGNED AS A DEED by the said)
BARBARA ELIZABETH KIMBER in the presence of:-)

Witness signature

Witness name (BLOCK CAPITALS)

THE COMMON SEAL of **ABBEY NATIONAL PLC**)

was hereunto affixed in the presence of:-)

DRAFT

DRAFT

Agenda Item 7

Application Number

P/2012/0272

Site Address

15 Newton Road
Torquay
Devon
TQ2 5DB

Case Officer

Mrs Ruth Robinson

Ward

Tormohun

Description

Formation of 4 flats in site curtilage (In Outline)

Executive Summary/Key Outcomes

This elevated garden site abuts the north eastern side of Newton Road as it approaches Torquay town centre. There is a history of approvals for residential development, most recently for 2 family homes, which was approved in 1990. An appeal against a refusal to renew this permission was dismissed on the grounds of poor visibility for emerging vehicles only. This application, which is in outline, with all matters reserved provides for 4 50m² flats with no on site car parking. Highways are supportive of this due to the sustainability of the location. However it is thought that the development of the garden site for 4 flats of this size results in an elongated form of building that is out of character with the street scene and adversely affects the setting of the adjacent Torre Conservation Area.

Recommendation

Refuse: The development of this site for 4 flats produces a building that presents a long edge to the street which cuts across the established grain of the area and thus adversely affects the street scene and the setting of the adjacent Torre Conservation Area. As such the scheme is contrary to policies H9, H10, BES, BE1 and BE5 of the saved Torbay Local Plan 1995-2011. It is also contrary to policy 53 of the NPPF which seeks to resist garden development where this would cause harm to a local area

Site Details

The site comprises a detached domestic dwelling with a long, narrow elevated garden area which is bounded by a high stone retaining wall which extends along Newton Road close to the junction with Barton Hill Road.

To the north east of the application site the land rises again and the site is backed by a further high stone retaining wall which forms the garden boundary to domestic dwellings on Barton Hill Road. Generally, the character of development in the immediate area is quite mixed. On the opposite side of Newton Road are found sizeable Victorian Villas which are largely in hotel use. These are located

in the Torre Conservation Area. The northern side of Newton Road has been developed with post war properties of a more domestic size and scale and in a range of differing styles and characters.

Planning permission has been granted twice in the past for residential development on this site but it is now lapsed.

Detailed Proposals

This application is an outline application with all matters reserved and is for the construction of 4 50m² flats on the site with pedestrian access only being provided via an excavated lobby from Newton Road.

Summary Of Consultation Responses

Highways: Given the proximity to the town centre and bus routes no objection is made to the lack of car parking. Whilst there is no restriction on parking along this stretch of Newton road it is a bus route and there is an aspiration to introduce a cycle route and there is some concern that deliveries and refuse collection may impact on this.

Drainage: The application indicates that surface water is to be disposed of by soakaways but no details are provided about the capacity of the ground to cater for this. For this reason the Drainage engineer has asked that filtration tests be carried out before permission is granted.

Summary Of Representations

There have been 2 letters of objection concerned with parking, traffic congestion, pedestrian safety, impact on the highway retaining wall and quality of living accommodation to be provided. A further letter is concerned about the integrity of the stone retaining wall which supports the contributor's garden. These are reproduced at Page T.201.

Relevant Planning History

P/1988/0452: Erection of 1 dwelling; Refused 21.04.88. Subsequent appeal dismissed.
P/1988/2785: Erection of detached house; Approved 17.02.89
P/1990/0500: Erection of 2 dwellings; Approved 15.05.1990
P/1995/1063: Renewal of above. Refused, subsequent appeal dismissed 17th March 2003.

Recent pre app discussions in relation to 3 storey building with 8 flats not encouraged due to amenity and traffic concerns.

Key Issues/Material Considerations

The main concerns relate to the principle of garden development, scale of development on site, impact on neighbours, quality of accommodation provided, lack of parking, pedestrian and highway safety, appearance and impact on retaining walls. Each of these will be addressed in turn.

Principle and Planning Policy -

The relevant planning policies relate to the quality of the residential environment, its relationship to neighbours, its appearance and the impact on the highway network.

Principle of Garden Development

Planning guidance in relation to garden development has been subject to change in recent years from encouragement to maximise the use of suitable garden land to provide housing opportunities to moves to resist 'garden grabbing'. The most recent guidance in the NPPF suggests that LPA's should consider the case for setting out policies to resist inappropriate development of residential gardens, where development would cause harm to the local area. The use of garden land for housing development is normally resisted unless it can be shown that its use produces a form of development that is in character with surrounding development, there are no adverse impacts on amenity nor does it result in overdevelopment of the site. The garden in question is of a size that could accommodate a suitable level of new development without compromising the amenity of the parent property, it is not 'backland' which does tend to lead to problems of amenity and it forms a backdrop to the main approach to Torquay where sporadic building in garden plots is not wholly out of character. Past history indicates it has been previously considered suitable for residential development.

The refusals of planning permission were based solely on the car parking arrangements which were considered to be unsafe in terms of highway safety rather than on the principle of garden development and this concern was supported on appeal.

Scale of Development on Site/Impact on Neighbours/Quality of Accommodation

Whilst all matters are reserved, illustrative plans indicate 4 one bed flats in a 2 storey building measuring 27m by 6m. It has a bigger footprint but is lower in height than the previous approval for 2, 3 storey 3 bed dwellings which were approved in 1990. It represents a similar density of occupation. Whilst the scheme maintains sufficient amenity space for the parent property and the proposed scheme is not unduly cramped or likely to suffer from a poor quality residential environment arising from a lack of space, it does result in a very elongated building form which is not wholly compatible with the character of the area. This point will be expanded later in the report. In terms of amenity, it is sufficiently well removed from its neighbours to undue impact in terms of privacy or overlooking.

Highway Safety/Lack of parking

Previous refusals of planning permission on the site were based on concerns about highway safety arising from arrangements to provide on site car parking. This involved excavating through the existing stone retaining wall to ground level to provide garaging/open car parking. The most recent appeal decision, in relation to the refusal to renew the approval for 2 dwellings found against this on the grounds of poor visibility only. The applicant therefore contends that if no on site parking is provided, then the Inspectors concerns are overcome. Planning policy in relation to car parking has modified in the intervening years and there is flexibility on sites which are sustainably located with convenient access for public transport and local services such as this one. Bike storage is provided within the pedestrian lobby. It is located close to a bus stop and to a railway station. On street car parking, albeit heavily used is available along the frontage of this property. Highways have indicated support for this approach. Although they highlight concerns about delivery lorries and refuse vehicles possibly interrupting the free flow of traffic at busy times of day it is not thought that this will be of sufficient harm to warrant a refusal of planning permission.

Appearance

This is a reserved matter. Illustrative plans show an elongated building with a flat roof and of a quasi Art Deco design. It is shown to be of a render finish, which is locally distinctive and with powder coated aluminium detailing in terms of windows and rainwater goods. The character of the area is quite mixed in terms of building styles particularly along the northern side of the Newton Road. However, the site is located in an elevated position adjacent to the northern boundary of the Torre Conservation Area and so it is important to consider whether the broad form of the proposed building is capable of being accommodated in a way that fits with the overall grain of the area and does not therefore adversely affect the setting of the conservation area. The shape of the site severely constrains the form that any building can take. The development of the site for 4 flats inevitably presents a long edge to the street and cuts across the established grain, where properties are either of a traditional villa style as in Conservation Area opposite to this site, or occupy much narrower plot widths as they do elsewhere along Newton Road. It is therefore considered that the proposal to develop the site for 4 flats would result in a form of development that would adversely affect the character of the street scene and the setting of the adjacent conservation area. A more discrete form of residential development that reflected more of the local character may prove to be more acceptable.

Impact on Stone Retaining Walls

The implementation of this scheme will require works to the stone retaining walls adjacent to the public highway and to the garden retaining walls to ensure their long term stability. This is not a planning but a civil matter. The applicant has been advised of the need to reach a party wall agreement with affected residents. This issue was raised in the appeal and carried no weight.

Climate change -

(conditions can be imposed requiring sustainability, energy efficiency measures to be taken on board)

Environmental Enhancement -

(landscaping/ design issues will be addressed at reserved matters stage)

Accessibility -

(This matter is dealt with in the main body of the report)

S106/CIL -

A S106 will be needed to meet community infrastructure in line with the adopted SPD, this will amount to the following:

Waste	£ 200.00
Sustainable transport	£5040.00
Lifelong learning	£ 640.00
Greenspace	£2200.00
TOTAL	£8080.00

Conclusions

There has been a long history to development on this site. Planning permission was most recently granted for 2 family dwellings on this site. An appeal into an application to renew this permission in 1995 was dismissed only on the grounds of poor visibility. The applicant has sought to overcome this by deleting the car parking and providing smaller units of accommodation which arguably rely less on accessible car parking than family homes. Given the sustainable location of the site, Highways are not concerned about the lack of car parking.

In terms of the scale of development on site, it does not lead to any quantifiable problem in terms of impact on the parent property, impact on neighbours, overdevelopment or poor quality of residential accommodation. It is not dissimilar to the density of occupation arising from previous approvals on the site.

In terms of its appearance however, the development of the site for 4 flats on such a narrow plot necessarily presents a long edge to the street which is out of character with the 'villa' forms within the adjacent Conservation Area or the narrower plot widths that exist along the north of Newton Road. For this reason it is recommended that planning permission be refused for this application for 4 flats as it is considered that the resulting form of building would adversely affect the setting of the adjacent Torre Conservation Area and the character of the local street scene.

Relevant Policies

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Agenda Item 8

Application Number

P/2012/0344

Site Address

91 Avenue Road
Torquay
Devon
TQ2 5LH

Case Officer

Miss Alix Cathcart

Ward

Tormohun

Description

Proposed Change Of Use Application From Existing Guest House To Residential Accommodation

Executive Summary:

This proposal meets the criteria of Policy TU6 for the loss of holiday accommodation and the location is suitable for the residential use proposed.

Recommendation:

Approval.

Site Details

Semi-detached two-storey house on the east side of Avenue Road, lying within the Torre Conservation Area.

Detailed Proposals:

Change of use from guest house with six guest rooms to residential use falling within Class C3 Dwelling Houses. The proposed accommodation would comprise hall, lounge, dining room, kitchen and one bedroom on the ground floor and five bedrooms on the first floor with associated bathroom facilities.

The application is supported by details explaining that the guest house is of limited value to the tourism industry, due to the small number of rooms and quality of accommodation provided.

It is also explained that the intention is that five disabled adults would live together as a family, with separate bedrooms and communal eating and living areas, supported to live independently in the community by a Care Provider who would have a sleeping night carer presence, with additional care staff visiting in the day, this being a use falling within Class C3 'Dwelling Houses' of the Town and Country Planning Use Classes Order 2010 as amended, Paragraph (b) "Use as a dwelling house, by not more than six residents living together as a single household, where care is provided for residents."

The application has been revised since its original submission to provide

proposed layouts of the ground and first floors, to provide supporting information addressing the loss of holiday accommodation and explaining the way in which the property is intended to be used.

Consultation Responses:

Natural Environment: The financial contribution would be used for the enhancement and improvement of Upton Park and the facilities available therein.

Representations:

One letter of representation has been received, expressing concern that the application did not make it clear what kind of residential accommodation was proposed. This has been re-produced at Page T.200.

Relevant Planning History:

None found.

Key Issues/Material Considerations:

While details have been provided, explaining that the proposed use would be one falling within Paragraph (b) of Use Class C3, as set out above, the application to be considered is for change of use from guest house to any use within Class C3 Dwelling Houses and the application falls to be considered on that basis.

Loss of tourist accommodation within a Principal Holiday Accommodation Area is considered against the document "Revised Guidance on the Interpretation of Policies TU6 (Principal Holiday Accommodation Areas) and TU7 (Holiday Accommodation elsewhere) of the Adopted Torbay Local Plan Approved March 2010". The application site is shown within a Green area where, for small guest houses with up to 10 bedrooms, residential use is likely to be allowed. The criteria of Policy TU6 have been addressed in the submitted details and it is accepted that the loss of previous use would not harm the holiday character and atmosphere of this PHAA.

The application site lies in a mixed use area with a Dental Surgery and car wash nearby, some other guest houses but predominantly residential uses, including flats and institutional accommodation. The building would originally have been built as a house. The internal accommodation proposed would be suited to the proposed use and the application site includes outside garden amenity area at the rear and parking provision at the front. There would be no material detriment to the privacy or amenities of the neighbouring occupiers and the proposed use is considered entirely appropriate for the property and its location.

Response to points made in representation/s: The kind of residential accommodation proposed has been addressed in the further details submitted.

Section 106/CIL: The application proposal has been assessed against the

provision of the document “Planning Contributions and Affordable Housing, Supplementary Document – Update 3, Economic Recovery Measures April 2011”. A financial contribution would be payable in respect of the proposed new use, as set out below. No contribution would be payable in respect of Sustainable Transport as use, in this regard, as a single dwelling would be significantly less than its use as a guest house. Mitigation has been applied at a rate of 50% in respect of Greenspace and Recreation, in recognition of the property’s former use. The contribution has been calculated on the basis that the dwelling would be in the category “Larger Properties 4+ bedrooms, in excess of 120sq m.”

Waste Management	£50
Lifelong Learning	£ 470
Greenspace & Recreation	£2370 x 50% = £1185
TOTAL	£1705

The discount for early payment would be £85.00.

Conclusions

The proposal reflects Local Plan Policy criteria. The application is recommended for approval, subject to provision being made prior to the issuing of a decision for the payment of the financial contribution due under the Council’s policy.

Informative(s)

01. The applicant is advised that this decision relates only to the use of the application site in Class C3 of the Town and Country Planning (Use Classes) Order 1987, as amended, and not, for example, to use as flats or as a house in multiple occupation.

02. Summary of reasons for the grant of permission: This proposal meets Local Plan policy criteria because the use proposed is appropriate one in this location.

Relevant Policies

TU6 Principal Holiday Accommodation Areas

Application Number

P/2012/0455

Site Address

25 Ilsham Road
Torquay
Devon
TQ1 2JG

Case Officer

Mr Adam Luscombe

Ward

Wellswood

Description

Change of use from Co-op store to luxury high end beauty salon/spa offering a range of treatments to include manicure, pedicure, chiropody, facials, therapeutic massage, waxing etc

Executive Summary / Key Outcomes

The application seeks consent to change the use of the existing retail premises within the well populated local centre. The proposed use is not specifically categorised although does have a significant resemblance to those found within A use classes by providing a service. Several representations have been received which primarily object to the introduction of a further beauty salon. Overall the proposed use is considered to maintain the level of diversity that exists within the local centre whilst providing additional services and additional capacity in that market place which could lead to additional trade being introduced to the centre. The application, on consideration of the local planning policies and the national planning policy framework, is considered to be acceptable and is therefore recommended for approval.

Recommendation

Approval.

Site Details

The site is located centrally within the Ilsham Road (Wellswood) local centre. It is currently in use as a retail unit. The centre itself is medium sized and consists of a variety of services/uses.

Detailed Proposals

The proposal is to change the use of the premises from retail to a beauty salon and spa. Additionally minor changes to the front elevation are proposed.

Summary Of Consultation Responses

No Comments

Summary Of Representations

At the time of writing the report, 19 letters of representation had been received. All of the representations object to the proposal. There is a common concern/issue that is raised in every letter, which is that there are enough beauty salons and that another is not required. Some of the representations go further to also suggest the proposal would limit diversity; potentially lead to a loss of jobs in the existing businesses; and result in a lack of retail and variety.

Furthermore one letter of support has been submitted by the applicant. The letter responds to the issues raised in the objections and notes connections between the objectors. All the letters have been re-produced at Page T.203.

Relevant Planning History

P/2003/0080	Installation Of New Shopfront And Access Ramp With External Roller Shutter (As Revised By Plans Received 5/2/03) – PERMITTED 03.03.2003
P/2003/1639	Illuminated Shop Sign And Illuminated Projecting Sign – PERMITTED 05.11.2003

29-31 Ilsham Road

P/2012/0123 - Change of use from A3 restaurant to A1 retail; alterations and installation of new shop front to number 29; installation of an ATM – PERMITTED 16.03.2012

Key Issues / Material Considerations

The key issue in relation to this application concern the impact of the vitality and viability of district centre.

It is important to note that this application follows a recent approval for a change of use of 29-31 Ilsham Road. That application changed the use from a restaurant/bar to a retail unit. The proposed occupants of that unit are the existing occupants of this application site, therefore moving rather than creating a new business. The nett change is then one of a bar/restaurant to spa/beauty salon.

Principle and Planning Policy - With regards to this application policy S10 (Local Centres) is most relevant. Consideration is also given to policies BE3 (Shopfront Design) and BE5 (Policy in Conservation Areas) due to the change, albeit minor, to the shopfront. Additionally the national planning policy framework is a further consideration.

Vitality and Viability - The local plan policy states that the “Council would support the retention and successful operation of local shopping centres, including the maintenance of an appropriate range of facilities...” The policy continues “The introduction of non-retail uses may have a particularly significant impact on the smaller local shopping centres and could impair their ability to provide an adequate range of shopping facilities for local people. Appropriate

non-Class A1 uses may nevertheless be permitted where they meet community-related needs, provided that they are not to the detriment of the amenities and character of the centre.”

On this basis, and given that the use proposed is considered to be very similar and bare significant resemblances to ‘A class’ uses (i.e. shops/professional services/restaurants/drinking establishments), it is deemed that this use would be an appropriate non-Class A1 use and would help to provide a range of facilities within the local centre.

The most recent retail monitor, produced by the Council, indicated two hairdressers; a tanning salon; and a beauty treatment and hair salon within the Wellswood local centre. It also recognised that retail in one form or other accounted for 57% of the uses in the centre. There was one very similar use, the Beauty Salon and Hairdresser, which would provide a similar facility. However, it is not considered that two such uses in the same centre with over 25 units would over dominate the character or detract from the diversity or variety and primary retail use of the local centre.

Economy - The proposed business indicates, on the supporting information, that it will support four full and two part time employment positions. Concern has been raised, in the representations, for the potential loss of employment within the existing businesses. However, although it is a similar use it is not considered that there would necessarily be a direct correlation between a new business and loss of jobs in other businesses.

Built Environment - The changes to the shopfront do not extend to the existing windows and door which will remain as such. Individual lights will be included above the fascia. The design does not impact on the character of the conservation area and will maintain an acceptable shopfront design in the streetscene.

Accessibility - The access directly into the site remains unchanged and given that it is making use of the existing premises within the district centre it would no need to provide additional parking. The local centre is served by nearby bus routes.

National Planning Policy Framework - This document places an importance on local authorities to support small businesses and growth in the economy. The maintenance of uses within the local centres will aid this in both senses with the inclusion of new business and potential increase in footfall helping to promote other businesses and their services.

S106 / CIL - No additional impact is considered through the introduction of this use following mitigation of the existing use. Therefore no contribution under the Council’s Planning Contribution and Affordable Housing Supplementary Planning

Document is considered appropriate or necessary.

Conclusions

The proposed use is considered not to detract from the amenities of the centre or to impact adversely on the vitality or viability of the environment. Whilst the use is similar to others, competition is considered to play a positive role in the sustainability of a local centre and there are differences which would set the individual businesses apart. Whilst there would be a resemblance between some uses it is not to such a significant proportion so as to impact on the principle shopping character of the area, particularly as the nett loss of units is a restaurant/bar and the provision of retail remains in an enhanced unit elsewhere within the centre.

The application is therefore recommended for approval.

Relevant Policies

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Application Number

P/2012/0500

Site Address

Land To The North East Of A3022
Brixham Road And West Of Elberry Lane
Churston
Devon

Case Officer

Mr John Burton

Ward**Description**

Change of use to temporary park & ride facility for 230 vehicles, with temporary buildings to run until 31st October 2014.

Executive Summary/Key Outcomes

This application seeks to renew a consent that was first granted in 2006. Whilst it is not ideal to keep renewing temporary permissions with further temporary permissions, neither the landlord nor the tenant (in this case the Council) is prepared to commit to a permanent approval for this facility. It is considered that the use of the area on a temporary basis does meet the tests of the relevant policy considerations. Further landscaping measures are not considered necessary. The site operates safely and fairly in Highways terms now that traffic lights have been installed to control traffic through the junction.

Recommendation

In view of the loss of the central multi-storey car park in Brixham, and a lack of suitable alternative provision, it is clear that there is a need for such a facility as this. The principal of using this field as a park and ride site has already been established in the past by previous permissions that have been granted by the Development Management Committee. The proposal is supported by the Highways Authority. For all of these reasons it is felt appropriate to recommend approval. However, the consultation period will not expire until 21st June 2012, and so Members are asked to give delegated authority to the Executive Head of Spatial Planning to deal with any representations that might be received after the date of the Committee.

Site Details

An area of land approximately 7 acres in size lying immediately to the south east of the go kart track and to the immediate west of Elberry Lane off Brixham Road. The site has been in use as a park and ride facility primarily for Brixham town centre since the first approval granted in 2005.

Detailed Proposals

Permission is sought to extend the length of time applicable for use of the site as a temporary park and ride facility. The land has been granted temporary permission three times before. The period required for occupancy is now up to the 30th June 2012. The number of vehicles to be parked on the field is the same as that previously granted, which is 300. The use of this field as a temporary park and ride facility has already been established via previous approvals and therefore, this permission merely seeks approval for the increase in time.

Relevant Planning History

- P/2005/0240/R3 Change of use to temporary park and ride facility with parking for 400 – 450 cars for a period of 12 months commencing April/May 2005, with temporary buildings. Application approved for a limited period until 31st March 2006.
- P/2006/0129/R3 Change of use to temporary park and ride facility for 300 vehicles for 4 years from 1st April 2006, with temporary buildings. Application approved on 3rd April 2006 to run until 31st March 2010.
- P/2010/0444/R3 Change of use to temporary park and ride facility for 300 vehicles with temporary buildings to run until 30 June 2012, approved 18 May 2010.

Relevant Planning Policy

National Planning Policy Framework
Section 4 - promoting sustainable transport

Saved Devon Structure Plan 2001-2016 (adopted October 2004)

- ST1 Sustainable Development
- TR1 Devon Travel Strategy
- TR3 Managing Travel Demand
- TR4 Parking Strategy, Standards and Proposals

Saved Adopted Torbay Local Plan 1995-2011

- L5 Landscape Strategy
- L4 Countryside Zone
- L10 Major Development and Landscaping
- NCS Nature Conservation Strategy
- TS (1 - 9 inclusive) Land Use Transportation Strategy
- T11 Park and Ride
- T26 Access from Development and onto the Highway

Summary of Consultation Responses

Highways Authority and Strategic Transportation Team: Raise no objections.

Representations

None received at the time of compiling this report, but the consultation period will not expire until 21st June 2012. Any representations received before the date of Committee will be reproduced or reported to Members. Members are asked to give delegated authority to the Executive Head of Spatial Planning to deal with any representations that might be received after Committee.

Key Issues/Material Considerations

The land has been relatively unaltered from its original state despite the park and ride facility now having been operated for many years. A new traffic light controlled entrance has been created with a turning circle for buses. Other than this, the land is still an open field without the parking spaces and bays having been marked or laid out.

The existing facility has been operating now for a number of years without known difficulties or problems, and it is recognised that the facility is desperately required until a longer term solution can be found to the requirement for parking for Brixham Town Centre. In this instance, an extension of time to allow the facility to operate for a further 2 years and 4 months does not seem excessive.

Paragraph 112 of Circular 11/95 on 'the use of conditions in planning permissions' states that a second temporary permission should not normally be granted. The Circular justifies this by stating that a trial period should be set that is sufficiently long for it to be clear by the end of the first permission whether permanent permission or refusal is the right answer. In this instance, the current proposal would be the fourth renewal. However, the Circular does state that renewal of a temporary permission will be justified where highway or redevelopment proposals have been postponed. In fact, this applies to the provision of replacement parking facilities to serve Brixham. In any event, it is the applicant who seeks the permission on a temporary basis and this is not being unduly imposed by the Local Planning Authority. In these circumstances, it is considered that a further temporary permission would not be contrary to the advice given in the Circular.

The current application being for a further 2 years and 4 months does not make this facility a longer term project and therefore its effect upon the landscape can be mitigated. In any event, it is known that the farmer who owns the land does not want any further planting, bearing in mind the temporary use of the site. The Council will in any event, be responsible for putting the land back to an acceptable state once the use ceases. For these reasons, it is not considered that the proposal should be subject to any further landscaping works.

A note from the Council's Drainage and Structures Engineer, submitted during the course of a previous application, concludes that there is no reason why use of this land as a temporary park and ride scheme would increase the risk of

flooding, and therefore, it is not felt necessary to insist upon a flood risk assessment for this use.

S106/CIL -

This scheme provides a sustainable solution to the parking requirements of Brixham. Clearly it is sustainable to support a park and ride scheme to try and encourage greater use of public transport rather than private and personal transport. On this basis, a sustainable transportation contribution is not required. No contributions towards other matters are considered appropriate.

Conclusions

It is considered appropriate to approve this application for a further temporary period as it provides a much needed and sustainable solution to the travel and parking needs of locals, visitors and holiday-makers visiting Brixham. It is clear that there is a need for such a facility as this, although in the longer term a more permanent solution will need to be found. The principal of using this field as a park and ride site has already been established in the past by previous permissions that were granted on temporary basis.

Condition(s)/Reason(s)

01. Within 2 months from the date of this permission, or at such other time as may be agreed in writing with the Local Planning Authority, the applicant shall agree the condition of the site with the Local Planning Authority. The use hereby permitted shall be discontinued and the land restored to the agreed former condition on or before the 31st October 2014.

Reason - The application is only for a temporary period and The Local Planning Authority would wish to ensure that once the use ceases, the land is put back to a reasonable and agreed state such that there would be no long term impact upon the landscape character and qualities of this area.

Relevant Policies

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Application Number

P/2012/0233

Site Address

145 - 149
Winner Street
Paignton
Devon
TQ3 3BP

Case Officer

Mr Scott Jones

Ward

Roundham With Hyde

Description

Construction of 3 new 2 storey flats with 2 bedrooms and 3 new self contained commercial units.

Executive Summary:

The proposal is an 'infill' development scheme on what is essentially a vacant plot of land located towards the northern end of Winner Street in Paignton. The site currently holds six parking spaces for rent from the Council.

The proposal is for a mixed use scheme that will offer three small office units (Use Class A2) at ground floor with three residential units above, within what would be a three-storey building. The design ethos is pastiche and seeks to draw on the character of 19th Century Victorian buildings in the vicinity.

It is accepted that the site clearly holds development potential, as matters stand the scheme is not considered a successful response to the site-specific constraints and opportunities. Of principle concern is the fact that the development will have an adverse impact on neighbour amenity, through the loss of light and outlook to properties/occupiers to the north (Number 151).

A further point of concern is whether the proposal is the correct solution for the historic context. The scheme has been amended in an attempt to address points raised by the Authority's Conservation and Design Team and comments are awaited as to whether this second iteration has successfully resolved points of issue.

With at least one fundamental matter unresolved the proposal is not considered acceptable on planning merit and the scheme is therefore recommended for refusal.

Recommendation

Site Visit; Refusal, on the grounds of;

(i) The proposed development would have an unacceptable impact on the quality of existing residential environments at No. 151 Winner Street, through the loss of light and outlook that would result from the proposed development. Specifically, in relation to the side windows at No. 151 a number of which are windows to principle rooms.

(ii) Lack of planning contributions secured to offset the impact of development upon local physical and social infrastructure,

and potentially; subject to the further views of the Conservation and Design Team

(iii) Detrimental impact upon the character and appearance of the Old Paignton Conservation Area and nearby listed buildings

Site Details

The site is essentially an undeveloped brownfield plot that appears as a break within the established built-up streetscene at the northern end of Winner Street, Paignton, which was cleared of its former buildings during the mid-20th Century. It currently holds six council-owned car parking spaces set in front of an overgrown exposed rock face, which rises steeply to eventually meet a retaining wall that defines the border with residential properties off Winner Hill Road to the west. To either side the plot is tightly framed by existing buildings, with a mid-20th Century two-storey mixed-use block to the south that holds ground floor retail with residential above, and a three-storey residential building to the north, which dates from the early/mid 19th Century.

In terms of designation the site and local area is within the Old Paignton Conservation Area and forms part of a defined Secondary Shopping Frontage and wider Town Centre. The area has also previously been party to a heritage regeneration scheme and it should be noted that the Victorian terrace opposite the site that dates from the early/mid 19th Century is grade 2 listed.

Detailed Proposals

The proposal is a three-storey mixed-use scheme that offers three commercial office units at ground floor, set behind glazed frontages aside entrance doors, with three residential units above, each set over two floors. The flats will offer two-bedroom accommodation with separate living, kitchen and bathrooms, along with a degree of outdoor amenity space to the rear. Each corresponding office and residential unit will be linked through a single access door to the side of each frontage, with secondary doors set behind each entrance.

In terms of detail the scheme offers a clearly pastiche design solution that draws from 19th Century Victorian development in the area. At ground floor the shopfronts are largely glazed and framed with timber surrounds. The doorways and fascias are also timber and there are also replica corbels featured. Above the shop frontages elevations are colour rendered inset with timber sliding sash windows arranged in pairs, which rise to a stone-capped parapet finish that frames a simple gabled slate roof form. Within the scheme there is a side access that offers rear access to the commercial units and storage space for commercial and residential bins and potential cycle parking. The scheme details differing colour render to visually break down the development to its three units.

In regard to general build parameters the building footprint is 13 metres wide by 8.5 metres deep, which increases to nearly 11 metres to the rear when including the rear access area and retaining wall. The height to the top of the parapet is between 8 and 8.5 metres, and to the apex of the gable between 9.75 and 10 metres. In regard to the buildings proximity to adjoining properties the proposal will be set approximately 2 metres away from number 143 Winner Street and between 1.5 and 3 metres away from number 151 Winner Street (reflecting a staggered building line).

Summary Of Consultation Responses

Conservation & Design Team: There is no objection to the principle of (re)development of the site, however it must respect the existing street form and also preserve the setting of the Jubilee Mural funded by the HERS (heritage regeneration scheme).

In respect to the proposal submitted it is considered to be a missed opportunity. Winner Street is medieval in origin and retains much early fabric and the proposal is a pastiche but has none of the character of the surrounding historic buildings. The shop front design is considered rather strange and the corbels of the shop fronts step up in height across each individual building which looks unbalanced and without precedent for this in the area.

There are several good contemporary buildings in this area which have been well received locally, such as Banner Court and Dove Court along with the conversion works in Well Street, which offer very good ideas for taking a site like this forward.

It is concluded that the proposal does not accord with Policy BE5 *Policy in Conservation Areas* or our design guidance, as it fails to conserve or enhance the character or appearance of the area.

Further comments are awaited in response to the minor revisions submitted 29/05/12.

Archaeology Officer: Should the proposal be supported, it is recommended that a condition be attached to ensure that no development shall take place within the application area until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation (submitted by the applicant and approved by the Planning Authority). The reasoning being that where an important archaeological site will be materially damaged or destroyed as a result of development following the granting of planning permission, the developer will be required to make provision for its archaeological recording, preservation, storage and publication as a condition of the permission.

Environmental Health and Protection: Having reviewed the “Daylight and Sunlight Study” for the proposed development it would appear that there will be significant daylight loss for a number of windows at 151 Winner Street.

From the report it also indicates that the diffuse daylight of some of the neighbouring windows would be adversely affected if the development went ahead.

Lack of daylight can have significant health impacts and affect peoples well being.

I therefore feel that if the development was granted in its current form a number of windows of the adjacent building would be adversely affected and this could have health impacts on the residents.

Torbay Development Agency: The TDA support this application as the development creates 3 new commercial units on the ground floor which will be in keeping with the secondary shopping frontage of the surrounding area and will provide facilities to encourage new businesses into the area, therefore positively regenerate this part of Winner Street. The scheme also creates three new apartments which will help towards meeting the housing shortfall in Torbay.

Strategic Transport / Highways: The site is currently a private parking area along Winner Street, a predominantly built up area on the edge of Paignton town centre. The development would lead to the loss of this parking facility. The development includes cycle parking in line with standards which is welcomed.

Although Winner Street is not a bus route, the site is close to Paignton Bus Station and routes running to and from the town centre, so is very accessible by public transport.

If supported planning contributions inline with the SPD should be sought for cycle route improvements in the vicinity of the site based on the increase in commercial floor area and residential units. At least one cycle parking space should be available for each dwelling and if within a garage the bike must be

accessible with a car parked inside.

Drainage: No comments offered as of 08/5/12

South West Water: No comments offered as of 08/5/12

Summary Of Representations

Four letters of representation received, all from owners or occupiers of properties within 151 Winner Street. The representations cover the following points in terms of their objection:

- Impact of the loss of light on the living environments
- Impact of the loss of outlook from key rooms
- Impact of the loss of parking and the creation of residential units without parking
- Impact of the excavation upon adjacent buildings
- Maintenance access affected
- The area already has empty shops and flats and the provision of more of the same will only add to this problem
- Overlooking into a garden area

These are re-produced at Page P.200.

Relevant Planning History

Pre-Application Enquiry: ZP/2011/0459, 3 Townhouses. Not Supported

Key Issues/Material Considerations

Borne from its context the key issues for consideration are deemed to be;

- (i) The general principle of the mix of uses and general layout
- (ii) The visual impact and impact upon the Old Paignton Conservation Area and nearby listed buildings
- (iii) Implications upon local neighbour amenity
- (iv) Highway, parking and traffic matters

The principle of the proposed uses

The proposal sits within a defined Town Centre site and Secondary Shopping Frontage. The key policy considerations are considered to be whether the proposals would undermine the shopping character, contribute positively to the town centre (as a focus on commercial or community life), and whether there would be any detrimental effects upon the visual or other special character or amenities of the area. Consideration should also be given to the suitability of the layouts in terms of being fit for purpose and thus sustainable for the uses proposed.

Firstly in terms of general principles the basis of a mixed-use scheme that offers ground floor office use with residential units above appears to sit comfortably with

policy guidance. In terms of it being in an established shopping area there is the notion that additional commercial units would help with the supply of extra services offered in the area, which may have resultant positive impacts upon footfall and mutual trade, thus helping to foster vitality and the potential for reciprocal benefit. The specific use has been amended, moving away from A1 retail to A2 office use to provide a suitable mix of commercial uses within the Secondary Shopping Frontage, this change is considered to be acceptable in principle given the sites location and the existing vacancies for retail outlets in the area.

In regard to the finer detail and the appropriateness of the commercial and residential environments offered the consideration is as follows.

Although relatively small and lacking any obvious storage/ ancillary space the scale of units appears in keeping with certain elements of the local commercial character. Secondary Shopping areas are often the setting for small independent retailers and niche operators that are not seeking to compete with major retailers and possibly do not require additional service area or storage. Therefore compact starter units are well suited for this location and the scale is therefore not judged inappropriate for the context.

In regard to the residential environments proposed the units appear to provide a suitable scale of living space, offering key habitable rooms with good levels of natural lighting. Amenity space is somewhat limited but is reflective of town centre living and local context. External waste storage areas appear to be provided via the ground floor private alleyway, and cycle parking is mentioned although no detail is offered. All matters considered there is no obvious concern in respect to the quality of the living environments offered in the scheme.

Visual implications / impact upon the historic built environment

The site sits in a sensitive historic context that has evolved from medieval times, which gives a somewhat eclectic local form. In terms of policy guidance as it sits under Conservation Area designation and forms part of the setting of a grade 2 listed terrace that lies opposite the site the visual implications are key.

As previously expressed the proposal offers a pastiche design that seeks to reflect the predominant local form, that of Victorian commercial and residential development that is clearly present in and around the northern arm of Winner Street. As a pastiche response it expresses simple painted-render elevations, inset with timber-framed openings that operate in a vertical sliding sash manner, and ground floor features that also encompass corbels and wrought iron railings to the outside gate.

It is accepted that the proposal is a pastiche of the Victorian building form locally present, however it is not considered to hold the engrained character of these surrounding historic buildings. Concern draws on the belief that successful

design does not generally require the imitation of past styles, which can often produce a 'lowest common denominator' result and as in the case here, rather than play homage to historic buildings it would actually devalue the genuine article.

Good contextual design offers the potential for bolder solutions with greater flair and imagination in order that new and old buildings coexist without disguising one another or weakening the authentic. Supportive of this thought is the notion that standard solutions are rarely acceptable in sensitive locations, as they are unlikely to create a distinctive identity or make good use of a particular site. This somewhat reaffirms that a pastiche approach is not always necessary as contemporary design that relates to the context in terms of scale and massing, proportions of windows and materials etc, is considered often to be a more successful approach.

The Authority's conservation team have further noted that the area features several good contemporary buildings which sit comfortably aside the historic fabric, and it is questioned whether this site would better suit such a design philosophy in order to guard against the potential negative impact of this pastiche design in the street.

With full consideration of the sensitivities of the historic context it is considered that the proposal would not preserve or enhance the character or appearance of the Conservation Area and hence the visual implications of the scheme are unacceptable.

Neighbour amenity issues

Amenity issues centre on the impact upon adjacent occupiers to the site, with thought towards the potential loss of privacy, loss of light or outlook, or creation of an overbearing relationship.

It is firstly ventured that it is unlikely that properties/occupants to the rear (Winner Hill Road), to the south (Number 143), and to the east (across Winner Street) would experience any notable change in the levels of amenity afforded them. This is due to the relationship between buildings, such as the distances involved, local topography, lack of window openings etc. The only notable relationship for consideration is therefore that to the north, with the occupiers of residences within 151 Winner Street.

Firstly in regard to any potential loss of privacy the proposed building lacks any form of side facing windows or doors. This affords protection against the potential for direct inter-looking between rooms within the proposed building and existing properties with openings to the side of Number 151. Aside inter-looking is the potential for over-looking, which is limited to the risk from the raised courtyard gardens set at first floor level to the rear (which respond to the sloping topography). The detail shows that these areas are bounded by 2 metre high

partition walls, which afford privacy between each unit and with those properties adjacent. This border treatment is considered to remove any potential overlooking into rooms within Number 151 and hence, with all matters considered, it is judged that local privacy levels would remain largely unaffected by the development.

In regard to loss of light, outlook and the potential for the creation of an overbearing relationship, such issues are all closely entwined and centre on the relationship and distance between buildings and the massing of the proposal.

The proposal seeks to provide a three-storey building, the scale of which is 8 metres to the eaves and nearly 10 metres to the apex, across a depth of 8.5 metres, which is to be positioned between 1.5 and 3 metres away from the end wall of Number 151 (which has a slightly staggered building line). The key question is therefore whether the scale and massing of the building at this distance would offer unacceptable amenity impacts upon the occupiers of the three adjacent flats, which all feature rooms naturally lit and afforded outlooks from existing windows within the side elevation.

In regard to the impact the applicant has submitted a daylight and sunlight study to offer understanding on this matter. The study confirms that there are four sensitive windows, which are those within the ground and first floors of the adjacent building and directly opposite the flank elevation of the proposal. It progresses to detail that the impact is best appraised using what is known as the Vertical Sky Component (VSC) and progresses to state that the daylight afforded may be adversely affected if after the development the VSC is both less than 27% and less than 0.8 times its former ratio. It concludes that after the development all four of the sensitive windows would achieve a score both less than these, but notwithstanding this it is suggested that guidance infers that where existing buildings sit close to a common boundary a higher degree of obstruction may be unavoidable and alternative VSC targets can be set using a hypothetical mirror image. It finally concludes that this relaxed methodology and the resultant relationship compared to a mirror image offers resultant levels of light loss that are acceptable and inline with BRE guidance.

Notwithstanding the conclusions cited in the above referenced supporting document the provision of a three-storey building between 1.5 and 3 metres away from the flank elevation is considered to have a significant effect on the level of light and outlook afforded the adjacent rooms at ground and first floor level, both in terms of the received light and the level of outlook offered. Indeed prior to offering that revised targets can be set the submitted document concludes a significant drop in the VSC following development, to levels that are greatly below the point where daylight afforded would be adversely affected.

With consideration of the documents submitted and the site context and expected relationship, the premise that revised targets can be set using a mirror

image of the adjacent building is not supported in this situation. It is therefore considered that although it may be appropriate in certain circumstances, in this particular context it would offer a fundamental change in the levels of light and outlook, greatly harming the level of amenity, which is contrary to policy.

Highway parking and traffic matters

The issues relate to the loss of the existing parking provision and the suitability of the resultant uses without supportive on-site parking.

Firstly the loss of the six parking spaces, which are currently rented from the Authority rather than openly available as public spaces, is not apposed on Parking grounds as there is provision for public and contract parking in close proximity in the Crown and Anchor Way car park and other central car parks. The current provision, although offering a local service, can therefore be met elsewhere locally with little impact.

In regard to the resultant arrangement, of offices with residential use above, without dedicated on-site parking, the issues are detailed below.

Small-scale commercial space in the area is characteristically offered without dedicated parking and the scheme fits with this general precedent. The opportunity for sustainable travel to this central location, along with the use of public parking in long and short-stay areas, for employees and potential customers, is considered a suitable arrangement in the context. In addition it should be noted that the removal of the existing parking spaces is likely to offer the opportunity for the supply of further street parking in front of the site where double yellow lines currently reside, which itself would offer some improvement.

The provision of residential units without accompanying parking is commensurate with the local character of this central area and sits comfortably with the expectations of town centre living. Considering the central location it is accepted that the development does not necessarily require any on-site parking provision as any occupants would be served by good local transport links and access to key facilities.

The Authority's estate office are accepting to the potential loss of parking through redevelopment and the Authority's transport team does not oppose the development provided suitable cycle parking is offered and contributions to infrastructure works inline with the scale of the development (as outlined within the adopted SPD).

S106/CIL -

The application will provide three commercial units and three residential units, which would create additional pressures upon local physical and social infrastructure, costs which can be recouped as sanctioned by Section 106 of the 1990 Planning Act. The Council's adopted SPD *Planning Contributions and*

Affordable Housing: Priorities and Delivery outlines the levels for contributions for varying forms of development. It also outlines that mitigation can be offered for job creation in order to help foster economic regeneration. Considering current guidance the following levels of contribution and permissible mitigation is as follows;

Contributions triggered by three residential units within the 55-74m2 category:

Sustainable Transport:	£ 7050.00
Greenspace & Recreation:	£ 6150.00
Education:	£ 2490.00
Lifelong Learning:	£ 900.00
Waste & Recycling:	£ 150.00

SUB-TOTAL: £16,740.00

Contributions triggered by 83m2 of A2 commercial space:

Sustainable Transport: £4071.35

Mitigation triggered by job creation of 83m2 of commercial space (based on job creation for A2 office set at 1 job per every 16m2):

Mitigation: £10686.25

Resultant level of planning contributions triggered by the development under current policy guidance: £10,125.10

As the proposal is recommended for refusal negotiation towards an agreed S106 Agreement have not been advanced. The lack of a signed S106 should therefore sit as a permissible reason for refusal, as securing the contributions as outlined is a material consideration on the schemes planning merit.

Conclusions

The site clearly holds development potential however the scheme for consideration does not appear to successfully respond to the varying constraints that form part of the context of the site. As matters stand the proposal does not adequately address concerns over its likely affect on neighbour amenity, through the loss of light and outlook to afforded properties to the north, or satisfactory express that it is the correct solution for the historic context.

With the above matters unresolved the proposal is not considered acceptable on planning merit and the scheme is recommended for refusal due to the impact upon local residential amenity and the impact upon the historic built environment.

Relevant Policies

SS	Shopping strategy
S4	Secondary shopping frontages
HS	Housing Strategy
H3	Residential accommodation in town centre
H9	Layout, and design and community aspects
ES	Employment and local economy strategy
E9	Layout, design and sustainability
TS	Land use transportation strategy
T25	Car parking in new development
W7	Development and waste recycling facilities
BES	Built environment strategy
BE1	Design of new development
BE5	Policy in conservation areas
BE6	Development affecting listed buildings

Agenda Item 12

Application Number

P/2012/0327

Site Address

Lewton Lodge
Adelphi Lane
Paignton
Devon
TQ4 6AS

Case Officer

Mr Alexis Moran

Ward

Description

Change of use from 2 Holiday apartments to 2 Residential apartments

Executive Summary/Key Outcomes

The application seeks permission for a change of use from two self contained two bed holiday units to two full time residential units of accommodation.

When considered against TU6 it is considered that the proposal does not satisfy all of the requirements of the policy and therefore is not acceptable for approval.

Recommendation

Refusal

Site Details

The site, Lewton Lodge, Adelphi Lane, Paignton, is currently in use as two self contained two bedroom holiday apartments, one on the first floor and one on the second with an area marked out for storage on the ground floor.

The site is located to the rear of The Commodore Hotel on Esplanade Road which makes up part of an integral frontage to the Paignton Seafront South Principal Holiday Accommodation Area (PHAA).

Detailed Proposals

Permission is sought for a change of use for the unit from two self contained holiday apartments to two permanently residential apartments.

Summary Of Consultation Responses

None

Summary Of Representations

2 Letters of support have been received and are re-produced at Page P.202.

Relevant Planning History

None

Key Issues/Material Considerations

The property is situated within a Principal Holiday Accommodation Area, as defined by policy TU6.11 of the Saved Adopted Torbay Local Plan 1995-2011. As originally approved by the Council, the purpose of this policy was to resist changes of use away from holiday accommodation where that change would be detrimental to the character and function of the Principal Holiday Accommodation Area. This usually resulted in refusal to grant planning permissions to change uses from holiday accommodation to permanent residential occupation.

As a result of recent changes in holiday trends and more importantly the recent severe economic problems, policy TU6 has been examined again and re-interpreted to ensure that it is up to date, clear and gives a degree of flexibility in the current economic climate. Two years ago the Council adopted a revised interpretation of the PHAA policy. Prior to its adoption, this Revised Guidance was the subject of public and stakeholder consultation. Although the Revised Guidance on PHAA's does not form part of the LDF or Local Plan, it is capable of constituting a material consideration which can be weighed against others when determining whether consent may be granted.

“Revised Guidance on the Interpretation of Policy TU6 (Principal Holiday Accommodation Areas)” (March 2010) sets out a traffic light based approach whereby PHAAs were colour coded into 3 areas. This site sits within Paignton Seafront South PHAA which was identified as a red area. Paragraph 3.4 of the Revised Guidance states that in these areas it is essential to maintain and enhance the holiday use and character. In other words there is a presumption that residential use will be resisted.

Although the property is within a red zone it is on the boundary with a Green Zone where the conversion of units of this size would, in principle, be considered to be acceptable. The property is separate to and located at the rear of an integral building within the PHAA and it may be deemed that it has been added to the red zone by association rather than on the basis of its importance as a unit of holiday accommodation.

Policy TU6 states clearly that applications involving the loss of holiday accommodation within an identified P.H.A.A. should be tested against 4 key criteria and that they may be permitted where the following criteria apply:

- a) the premises lack an appropriate basic range of facilities and do not offer scope or potential for improvement, thereby failing to meet the reasonable requirements of the tourist;
- b) the premises have restricted bedspace capacity, having a limited number of bedrooms (if serviced) or apartments (if self-catering);

c) the loss of the premises would not be to the detriment of the holiday character of the particular locality, nor set an unacceptable precedent in relation to the concentration and role of nearby premises; and

d) the proposed new use or development is compatible with the surrounding tourism related uses and does not harm the holiday character and atmosphere of the PHAA.

The premises, on the whole, has a basic range of facilities, however there is little scope for improving the holiday facilities.

It is deemed that the unit does have restricted bedspace capacity due to its size and limited potential for extension.

There is a mix of holiday and residential uses in the area however it is considered that the prevailing character is that of holiday use. No supporting advice has been provided to show that the current use as holiday apartments is unviable. If further properties were granted permission for residential use it would further undermine the holiday character of the area setting a precedent for the continuation of the loss of holiday accommodation in this Principal Holiday Accommodation Area. As such the change of use would not meet this aspect of policy TU6.

Suitable on site parking is available to accommodate two separate residential units.

The prevailing context of immediate area is of a strong holiday character and with many properties along the road being in holiday use. The property offers two, two bedroom units of accommodation in close proximity to the seafront and the town centre, providing an appropriate range of facilities and standard of accommodation to meet the reasonable requirements of tourists.

Policy TU6 is the starting point in determining this application. It is the officers view that the test set out in TU6 have not been met. Similarly the Revised Guidance would not support the proposed change of use. As such in accordance with the requirements of TU6 this application should not be permitted.

S106/CIL -

If Members were minded to approve this application consideration should be given to the need for a planning obligation under s106 of the Town and Country Planning Act to offset the costs that would arise from this proposal.

In line with Government advice, sound economic principles and principles of sustainable development, the Council has decided that the true cost of any

development should be realised by the development itself without becoming a burden upon the Local Authority or its Council Tax payers. To this aim, the Council has now adopted policy in line with Central Government legislation and advice from the Government Office for the South West which provides justification for this approach and levels of payments that would be sought in relation to specific developments. This is detailed in Adopted Supplementary Planning Document LDD6 ('Planning Contributions and Affordable housing: Priorities and Delivery'). The result of this assessment is that the following contributions will be required..,

Waste Management	£ 50.00
Sustainable Transport	£1,805.00
Education	£1,660.00
Lifelong Learning	£ 470.00
Greenspace	£1,185.00
Total Contribution	£5,170.00

(less 5% discount for upfront payment)

TOTAL: £4,911.50

Conclusions

When this proposal is tested against the relevant policies of the Saved Adopted Local Plan it fails. The proposal is therefore not considered to be appropriate for planning approval and should be refused.

Condition(s)/Reason(s)

01. The proposal to change the use from holiday to residential is contrary to policy TU6 of the Saved Adopted Torbay Local Plan which seeks to prevent such changes of use within identified Principal Holiday Accommodation Areas (PHAAs) where that change would be to the detriment of the character and function of the PHAA. The Council consider that the proposal would specifically fail to meet tests (a) to (d) set out in policy TU6, and there are no other change in circumstance that would justify a breach of the adopted policy.

02. The applicant has failed to provide or legally agree to, any contributions in order to offset the costs involved in supporting essential community facilities such as transport services, education facilities, the provision of open space and to maintain infrastructure stemming directly from development that would arise to the Local Authority and the tax payer as a result of this proposal. This makes the proposal contrary to policies CF6 and CF7 of the Saved Adopted Torbay Local Plan (1995 – 2011) and to the subsequent adopted policy position of the Adopted Supplementary Planning Document LDD6 ("Planning Contributions and Affordable housing: Priorities and Delivery", adopted in May 2008) and the more recent update the 'Planning contributions and affordable housing supplementary

document, update 2: Economic Recovery Measures', (adopted by the Council in June 2010.)

Relevant Policies

TU6 - Principal Holiday Accommodation Areas

Application Number

P/2012/0392

Site Address

Land At Junction Of Long Road And
Waddeton Road
Paignton

Case Officer

Mrs Helen Addison

Ward

Goodrington With Roselands

Description

Erection of education facility to provide a centre of excellence for carbon reduction, renewable energy and sustainable construction, including a demonstration residential building, parking, landscaping and access (Use Class D1). Closure of vehicular access

Executive Summary/Key Outcomes

The application is for the provision of an Energy centre and demonstration house for South Devon College, to deliver courses in sustainable construction and renewable energy. The proposed buildings would have a high quality design to provide a sustainable and inspirational space for students. The application is accompanied by a detailed landscape scheme and includes the provision of a green roof on the main energy centre which would make a positive contribution to biodiversity in the area.

Recommendation

Subject to the receipt of satisfactory further information in respect of highways and the payment of a S106 contribution towards sustainable transport; Conditional Approval (conditions listed at end of report).

Site Details

The application site is situated on land bound by Long Road and Waddeton Road, adjacent to the entrance to the White Rock Business Park. Access to the site is from the main Brixham (A3022) road. The site is adjacent to a large roundabout and on the opposite side of Waddeton Road from the new Premier Inn.

The site is prominent in the street scene and clearly visible from the highway. The ground level is approx. 1.5 metres above road level. It has been cleared and has been left as rough ground. There are two vehicular access points onto the site. The eastern boundary with Waddeton Road has recently been landscaped. Along the western boundary there is a mature landscape hedge with a number of trees. To the west of the site there is a linear development of dwelling houses. These properties are set at a slightly higher level than the application site and are characteristically set back from the road.

The surrounding area is in mixed use, with residential and commercial uses as referred to above. The former Bookham technology site lies to the north on the opposite side of Long Road. Land to the south is undeveloped and forms part of the White Rock Business Park. In the plan there is no specific designation relating to the application site. A proposed cycle route is shown along Waddeton Road and Long Road adjacent to the application site.

Detailed Proposals

The application is for the construction of a building to be used as an energy centre for educational purposes by South Devon College, with a demonstration house on the site that will also be used for educational purposes. The purpose of the building will be to establish South Devon College as a leading training provider at the cutting edge of Micro-generation Training within the South West. The proposal will accommodate and promote high quality accredited training in renewable energy and sustainable building techniques. The aim is to provide an exemplar learning area bringing together public and private partners. The facilities would also provide and encourage product research and development and business incubation facilities, supporting business start ups.

The proposed floorspace of the main building would be 1781m² with a floorspace of 168m² for the demonstration house. The energy centre would be located centrally within the site with the entrance facing Long Road. Car parking and a service yard are proposed at the rear of the building.

The main building would be composed of two elements: a linear two storey block allowing a wide flexibility of teaching layouts and a lightweight box which would accommodate the entrance space and main construction hall. The front block roof would be topped with a 'green' sedum roof and the rear block topped with solar and pv panels. Adjacent to this at the northern end of the site would be the Code for Sustainable Homes Level 6/Passivhaus demonstration house to be used as part of the teaching curriculum. This property would be two storeys in height with a pitched roof over. The design of the roof would be asymmetric in order to accommodate solar panels on the southern elevation.

34 parking spaces and 21 cycle spaces would be provided at the rear of the main building. Pedestrian access to the site would be provided at both the northern and southern end and the vehicular access would be at the southern end of the site. The existing vehicular access adjacent to the roundabout would be stopped up. The College would employ approximately 16 full time members of staff in the building and would be able to cater for 400 trainees at maximum occupancy.

Within the building there would be a two floor construction hall where the main teaching programme would be carried out. Within this construction hall there would be two demonstration houses which would be of pre and post war design, the purpose of which would be to teach retro fitting of modern sustainable

technologies. There would be a large glazed entrance hall with a café adjacent to it. Characteristics of the design would be projecting pod features and also internal viewing galleries and walkways. There would be a number of general purpose rooms provided, incubation and innovation areas as well as IT facilities. There would be a small external construction space at the southern end of the building.

The proposed demonstration house would be finished in timber clad thermowood or charred cedar elevations with a tiled roof.

The proposed development was considered by the Design Review Panel and a copy of their report is reproduced at Page P.201.

The application was screened under the EIA Regulations 2011 and it was concluded that an Environmental Impact Assessment was not required.

Summary Of Consultation Responses

SWW: No objection to foul and surface water drainage being dealt with as identified in the drainage strategy accompanying the application.

Drainage and Structures: No objection

Green Infrastructure Coordinator: Fully supports the proposal to include a green roof and this will be an important part of showcasing sustainable building techniques. The Council should agree the specification for the roof as it is important that it is designed to a specification that ensures it functions properly. The green roof also provides the opportunity to provide significant biodiversity enhancements. Maintenance and management will be a critical factor to ensure on going success and a Landscape and Ecology Management Plan (LEMP) is suggested. The proposal also provides an opportunity to showcase current products and techniques that provide nesting, roosting and hibernating etc opportunities within the fabric of the building. Recommendations are made for managing the hedge. There is an opportunity for native and/or fruit and nut bearing species to be planted in the landscape scheme.

Arboricultural Officer: Requests a detailed tree survey relating to the hedge on the site and a landscape scheme.

Natural England: Based upon the information submitted in support of the application it is unlikely that the site includes habitat features suitable for greater horseshoe bats. The proposals should consider light spillage disturbance impacts upon suitable adjacent habitat features that support bat activity. Lighting can be designed to reduce or eliminate this potential impact. Welcomes the applicants desire to provide biodiversity.

RSPB: Should the application be granted, it should not result in a net loss

of habitat suitable for cirl buntings and does not involve removal of potential breeding habitat during the nesting season. Recommends a number of measures to ensure the habitat for cirl buntings and other species on the site is safeguarded.

Transport Planner: A site specific Travel Plan must be produced. Given the green credentials of the proposal suggests that the amount of car parking on the site should be reduced and additional cycle parking provided. Requests further information in respect of cyclists and bus users accessing the site. A S106 contribution to mitigate the impact of the development is requested that would be spent on rerouting the bus service, traffic restrictions outside the site and on approaches.

Environmental Health Officer: Consultation response awaited.

Summary Of Representations

None received.

Relevant Planning History

2004/1621 Outline Application For The Erection Of Buildings Comprising A Business Park Totalling Not More Than 55,740 Sq. M Of Accommodation (Including Ancillary Accommodation) Comprising A Hotel/Conference Facility (Use Class C1), Crèche (Use Class D1), Restaurant And/Or Public House (Use Class A3/A4), Health And Fitness Centre (Use Class D2) And Small Scale Retail Units (Falling Within Use Classes A1, A2 And/Or A3) With Associated Infrastructure And Engineering Works To Facilitate Access, Parking, Landscape And Drainage Requirements (In Outline). Approved 4.8.05

2011/0197 Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct 350 dwellings , 36,800m2 gross employment floorspace, a local centre including food retail (approx 1652m2 gross) with additional 392m2 A1/A3 use and student accommodation, 15 hectares of open space, sports pavillion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application). Approved at committee in February 2012; subject to the signing of a s106 agreement.

Key Issues/Material Considerations

The main issues to be considered are the principle of the proposed use in this location, the design of the proposed buildings, highways, ecology and biodiversity and impact on the amenity of adjoining occupiers.

Principle and Planning Policy -

The principle of providing high quality sustainable buildings on the site for educational use that would focus on teaching sustainable building techniques would constitute an appropriate form of development on this site. It would be consistent with the objectives of the National Planning Policy Framework (NPPF) and policies in the Torbay Local Plan 1995-2011.

The recently published National Planning Policy Framework (NPPF) identifies the need to prioritise development on previously developed land. It also expresses significant support to economic growth in order to create jobs and meet the challenge of global competition twinned with a low carbon future. It is considered that the proposal would meet all of these objectives.

One of the core principles of the NPPF is to “support the transition to a low carbon future in a changing climate”. In addition importance is attached to ensuring that a sufficient choice of education is available to meet the needs of existing and new communities. With regard to high quality design the NPPF states that great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

In the Torbay Local Plan 1995-2011 Policy CF1 is relevant and this supports the provision of new and improved community facilities. The application site is close to South Devon College and the proposed educational use would “place learning at the heart of the community”, which is a priority in the Torbay Community Plan. Policy E6 relates to the retention of employment land.

Although the site is not allocated for employment use in the Torbay Local Plan 1995-2011 there is a history of employment uses being permitted on the site. Policy E6 does permit and actively support the redevelopment or change of use of a site or premises allocated and retained for employment where it can be demonstrated the proposals meet a series of criteria the first being “there would be no significant adverse effect on employment opportunities within the Local Plan area”. The nature of the proposed use is relevant here. It is proposed to actively train and develop skills for future employees within the Torbay Area and meet the skills gaps currently identified by existing employers within the Torbay Area. The proposed development will enhance opportunities by training local people to meet identified and recognised skills gaps in the local economy. It will also deliver bespoke training programmes/requirements to employers in the area in the form of apprenticeships, training days, courses and vocational qualifications. Furthermore, the site will employ up to 16 members of education staff. For these reasons the proposal would be consistent with Policy E6.

Design -

The principle of the design of the building is to provide a dynamic and bold architectural statement as it will be the first South Devon College building people will see when visiting the main campus. It has also been designed to

complement the activities that it houses. In the design and access statement it is advised “this high expression of sustainable credentials is key to the buildings design in how it functions, as well as the bold language of its public face”.

The proposed building has a high standard of design with a modern and innovative external appearance. The sustainable credentials of the building would be readily apparent from the green roof, the overhanging eaves, brise soleil and projecting pods. Extensive glazed areas on the north elevation would allow views from the street into the building. The use of white rendered flat roof elements in the rear spine part of the building would visually link the design to the main Vantage Point campus. It is noted that there is no common theme of development in the area, as the area has evolved in a piecemeal fashion through a series of industrial and business estates.

The scale and size of the proposed demonstration house would be comparable with a conventional house. The use of projecting pods and timber clad thermowood or charred cedar elevations would reflect the sustainable credentials of the building.

At pre application stage the proposal was considered by the Design Review Panel (report reproduced at Page P.201). A number of the points raised by the Panel have been addressed in the submission such as relocation of cycle parking, retention of green roof, substitution of east facing glazed panel to the construction hall with insulated panels, replacement of coloured GRP elements on principle elevations and relocation of office and reception within the entrance hall. The demonstration house would not be suitable for use as a main dwelling owing to the extent that it would need to be used for teaching purposes.

The modern and innovative external appearance of the design of the proposed buildings would meet the objectives of Policies BES and BE1 in the Torbay Local Plan 1995-2011 in that it would provide a high standard of design that would make a positive contribution to the appearance and character of the area. Para 64 of the NPPF is relevant and states that “in determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area”.

Highways -

In principle there is no objection to the proposed development on highway grounds. The site is located close to the A3022 and is accessed via the main entrance road to the White Rock Business Park. It is noted that under application reference 2011/0197 the site was identified for the delivery of a 1,769 m² B1 (office). A comparative assessment of forecast traffic generations associated with both land uses (office and education) has been carried out by the applicant. It was found that the proposed Energy Centre would generate fewer total traffic movements and therefore there would be no adverse effect on the operational performance of the local highway network. The site is accessible by

public transport as there is a frequent bus service to the main college campus.

The Strategic Transportation officer has recommended that in accordance with the sustainable credentials of the proposed development the level of on site parking provision be reduced and has requested that bike lockers and pool bikes be provided. He has also requested further information in respect of accessibility to the site for pedestrians and cyclists.

A S106 contribution of £27,377 is required to off set the impact of the proposal on the highway network. This sum will be used to provide;

- Rerouting of the bus service
- Improvements to the bus service
- Well signed external links to the main campus
- Improved access for sustainable users over the Brixham Road
- Traffic restrictions outside the site and on approaches.

The College have agreed to pay this contribution by means of a Unilateral Undertaking.

Ecology and Bio-diversity -

The main arboricultural constraint on the site is the mature hedge along the western boundary. At the request of the arboricultural officer further information in respect of tree protection zones and management of the hedge has been submitted. The Arboricultural Impact Assessment recommends removal of a number of dead and dying elm, ash and sycamore trees and replacement with hazel trees and a minor component of hawthorn. Both a hard and soft landscaping scheme has been submitted. It is proposed that four Norway Maples along the eastern boundary are removed and replanted elsewhere.

At the request of the Green Infrastructure Coordinator specifications for the green roof and grasscrete on site have been submitted. A draft Landscape and Ecology Management Plan (LEMP) has also been received that provides a framework for the long term management and maintenance of the landscape on the site including the green roof.

An ecological survey of the site was carried out as part of the White Rock development. This found that there are no protected species present on the application site. Natural England has requested that light spillage be considered as part of the proposal and this can be addressed by means of a condition. There is an opportunity for bird/bat boxes to be provided on site and again this can be addressed by condition. The principal concern of the RSPB is to prevent loss of habitat for birds.

Overall through the provision of the green roof and the proposed maintenance and replanting of the hedge on the western boundary the proposal would

increase biodiversity on the site.

Impact on the amenity of adjoining occupiers -

The proposed building would be sited approximately 46 metres from the nearest dwelling house. The hedge along the western boundary would provide screening of the building. It is considered that this location would be sufficient distance away from nearby properties to prevent a loss of residential amenity.

Although the building would be used for teaching of construction techniques it is unlikely that it would generate a noise nuisance to nearby residents as the thermal properties incorporated into the design would provide an effective acoustic screen. The outside construction area is relatively small and would be largely screened by the existing building.

S106/CIL -

As stated above a sustainable transport contribution is required to off-set the impact of the proposed development. The College has proposed paying this by means of a Unilateral Undertaking which attracts a 5% discount resulting in a sum of £26,008.

Conclusions

In conclusion, the proposal would constitute provision of two high quality buildings to be used for education purposes for sustainable construction and renewable energy courses. The design and scale of the buildings would be appropriate in this location and would enhance the appearance and character of the area.

Condition(s)/Reason(s)

01. Parking provided
02. Material samples
03. Details of LEMP submitted
04. Bird boxes
05. Landscaping scheme implemented
06. In accordance with green roof specification and grasscrete specification
07. S106
08. Tree protection
09. Use for education purposes only
10. Details of lighting and light spillage
11. Works to stop up highway completed

Relevant Policies

-

Application Number

P/2012/0461

Site Address

Barton Pines Holiday Park
Blagdon Road/West Lane
Paignton
Devon

Case Officer

Mrs Helen Addison

Ward

Blatchcombe

Description

Variation of S106 on applications P/2008/1217 and P/2009/0479/PA

Executive Summary/Key Outcomes

The application is to vary the S106 agreement in respect of the approved tourism development on the site. The variation would allow provision of the Leisure Facilities Building after the completion of a proportion of the new holiday accommodation on the site. This is in order to secure funding for the project and varies from the original agreement in respect of the timing for the delivery of the leisure facilities. However, the variation will still provide for the completion of the leisure building linked to the provision of the new build holiday homes.

Recommendation

The S106 agreement be varied as requested by the applicant.

Site Details

Site of Barton Pines, which is situated about 2 kilometres to the north west of Collaton St. Mary on the edge of Torbay's administrative boundary with South Hams.

Detailed Proposals

The application is to vary the terms of the S106 Agreement in respect of when the approved holiday units can be occupied in relation to the provision of the approved leisure facilities on the site.

The previous approved planning applications were to convert the existing building and to construct lodges and cottages within the site for holiday use. An integral element of the proposal was the provision of a Leisure facilities building. This building would provide a swimming pool, hydro pool, gym, comprehensive spa facility, and coffee bar/lounge and terrace.

The applicant has found it difficult to secure funding for the proposed development in the current economic climate. In order to improve the viability of the scheme she has requested that the S106 Agreement be revised from the current wording:

“not to occupy or permit occupation of any of the Holiday Units before the Leisure Facilities are first available for use by owners, tenants, guests and holiday makers”

to read:

“The Leisure Facilities building shall be available for use by owners, tenants, guests and holiday makers within 20 months of the commencement of the first new build holiday unit (ie units 5-20 and 34-41)”.

And

“Not to occupy or permit occupation of any of the Holiday Units 2-4 and 21-33 before the Leisure Facilities are first available for use by owners, tenants, guests and holiday makers”.

Summary Of Consultation Responses

None.

Summary Of Representations

None received.

Relevant Planning History

P/2008/1217/PA Formation of holiday village to form lodges, cottages, apartments and leisure facilities. Conditionally approved on 25/11/2008, subject to a Section 106 Agreement to ensure, inter alia, that the cottages, flats and lodges are used for holiday use only. A maximum of 59% of the approved units were to be sold on long leaseholds and the remainder retained within the ownership of the developer to be let for holiday purposes only. 25.11.88

P/2009/0479 Amendments to previous approval (ref application P/2008/1217/PA)- enhanced leisure facilities building; additions to lodges and cottages; extensions to existing main building Approved 10.08.09

Key Issues/Material Considerations

The main issue is the effect of the proposed revision to the S106 Agreement on

the character of the development and the necessity to maintain a tourism offer at the site.

Principle and Planning Policy -

At para 28 the NPPF advises that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. The expansion of tourist and visitor facilities is supported. Policies TUS, TU3 and TU5 in the plan support the provision of new tourist facilities.

The proposed revision to the S106 Agreement would continue to ensure that the Leisure Facilities building is provided, as its development would be linked to the provision of accommodation on the site. Therefore, the proposed revision would not change the character of the proposed development. It is noted that it would be in the applicant's interest to provide the Leisure Facilities building as this would be a key element of the development on the site and would significantly increase the sites attractiveness to future holiday makers.

Economy -

The proposed development would result in substantial investment in the provision of a good quality new holiday use on the site. There would be a significant contribution to the local economy during construction and when the development was completed directly through creation of new jobs and also indirectly through attracting visitors to the area. It is not unreasonable to consider the current economic climate and it is appropriate for the Local Planning Authority to work with the developer to facilitate implementation of the development.

Conclusions

In conclusion, the proposed variation to the S106 Agreement would be acceptable, as it would still ensure the Leisure Facilities would be provided before the majority of the development is completed on the site.

Relevant Policies

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