



Friday, 6 March 2015

DEVELOPMENT MANAGEMENT COMMITTEE

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

Monday, 16 March 2015

commencing at **2.00 pm**

The meeting will be held in the Burdett Room, Riviera International Conference Centre, Chestnut Drive, Torquay

Members of the Committee

Councillor Kingscote (Chairman)

Councillor Morey (Vice-Chair)

Councillor Addis

Councillor Brooksbank

Councillor McPhail

Councillor Pentney

Councillor Pountney

Councillor Stockman

Councillor Tyerman

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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Email: governance.support@torbay.gov.uk

www.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 9 February 2015.

(Pages 1 - 4)

3. **Declarations of Interests**

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

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

For reference: Where a Member has a disclosable pecuniary 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 Governance Support or Legal Services prior to the meeting.)

4. **Urgent Items**

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

5. **P/2013/0785/MPA, Wall Park Holiday Centre, Wall Park Road, Brixham**

Erection of 165 dwellings (including 25 affordable); touring caravan park (including facilities building with office, cafe, laundry room, showers, toilets and 2-bed managers flat, 12 no. camping pods, 59 permanent touring caravan pitches, associated access and parking); community sports pitch (to be used annually as an overflow touring caravan park / campsite for 69 pitches during June, July and August); changing & shower facilities building for community sports pitch with associated access and parking; landscape and ecological enhancement works (including bat barn, hedgerow planting and footpaths); associated pumping stations,

(Pages 5 - 37)

roads, footways / cycleways, new vehicular access onto Centry Road and alterations / widening of existing access onto Wall Park Road; demolition of existing buildings (including former holiday park buildings and dwelling - 53 Wall Park Road) (Full Application) (Revised Scheme).

(This application is a departure from the Adopted Torbay Local Plan 1995-2011)

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|-----|--|-------------------|
| 6. | P/2014/0938/MOA, Land Off Luscombe Road, Paignton
Formation of up to 75 dwellings with associated road and landscaping. | (Pages 38 - 54) |
| 7. | P/2014/0947/MOA, Land Off Brixham Road -Long Road, Former Nortel Site, Paignton
Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. | (Pages 55 - 76) |
| 8. | P/2014/1238/MPA, Paignton Pier, Eastern Esplanade, Paignton
New first floor over existing building for outdoor cafe use. Entrance towers over existing building. Bridge connecting new first floor over existing two buildings. New disabled toilets. Re-cladding & re-fenestration of existing buildings. General use of pier open decks. (Revised plans received) | (Pages 77 - 83) |
| 9. | P/2014/0901/MPA, 250 Babbacombe Road, Torquay
Construction of additional car parking following demolition of garden centre (retrospective), provision of two water tanks and a pump house, and insertion of mezzanine floor and exterior doors in existing building. (Revised description) | (Pages 84 - 93) |
| 10. | P/2014/0902/VC, 250 Babbacombe Road, Torquay
Variation of condition 5 of previous planning permission (P/1983/0353) to permit additional items to be sold. | (Pages 94 - 105) |
| 11. | P/2014/0965/MPA, Former Royal Garage Site, 4-24 Torwood Street, Torquay
Mixed use development of hotel, 1 No A1 unit, 3 No A3 units, 3 No B1 office use units and 1 No B1 office use or D1 gym use unit at former Royal Garage site, involving the demolition of property Nos 4-24 Torwood Street, Torquay. | (Pages 106 - 139) |
| 12. | P/2014/1182/PA, La Rosaire, Livermead Hill, Torquay
Demolition of existing building and construction of 8 new apartments. | (Pages 140 - 150) |

- 13. P/2015/0042/PA, Princess Gardens, Off Torbay Road, Torquay** (Pages 151 - 156)
Temporary erection and operation of a 50m observation wheel with ticket booking office to the west (front of wheel) adjoining coffee & crepe unit within a timber decked seating area to the south (facing out to the harbour) and secure panelled service, ride control and generator compound area to the east (pavilion side). Open daily to the public from Saturday 28th March 2015 until no later than Sunday 1st November 2015.
- 14. P/2015/0103/VC, 5-7 Ilsham Road, Torquay** (Pages 157 - 161)
Variation of condition 7 pursuant to P/2014/0827 (2 new Dwellings and Change of use from A3 (Restaurants & Cafes) to A1 (Shop) and also from part,C3 (Dwelling house) to A1 (Shop)) - hours of operation of shop.
- 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 Governance Support know by 5.00 p.m. on Wednesday, 11 March 2015. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Note

An audio recording of this meeting will normally be available at www.torbay.gov.uk within 48 hours.



Minutes of the Development Management Committee

9 February 2015

-: Present :-

Councillor Kingscote (Chairman)

Councillors Morey (Vice-Chair), Addis, Brooksbank, McPhail, Pentney, Pountney, Stockman and Tyerman

(Also in attendance: Councillor Amil)

75. Minutes

The Minutes of the meeting of the Development Management Committee held on 12 January 2015 were confirmed as a correct record and signed by the Chairman.

76. Urgent Items

The Committee considered the items in Minute 77 and 78, and not included on the agenda, the Chairman being of the opinion that they were urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

77. Update on Appeal Decisions

The Senior Service Manager advised the Committee that the Independent Planning Inspectorate had confirmed Torbay Council's decisions on Tesco's proposed superstore at Edginswell and Bloor's proposed Club House at Churston Golf Course.

He thanked Members of the Committee and advised that the success had been as a result of excellent team work between Officers, Members and the Community.

78. P/2014/0909 County Hotel, 52/54 Belgrave Road, Torquay

The Committee were advised by the Team Leader, Development Management, that a request had been made for an extension of time to finalise the S106 legal agreement further to the decision of the Committee on 10 November 2014 which stated; S106 signed within 3months of the date of the committee or the application be reconsidered in full by the committee, unless otherwise agreed in writing by the Director of Place in consultation with the Chairman.

Resolved:

- i) for an extension of time to finalise the S106 legal agreement by 1 month, from the 10th February to the 10th March 2015.

79. P/2014/0997/MPA Devon Hills Holiday Village, Totnes Road, Paignton

The Committee considered an application for a touring caravan area to provide 42 touring pitches with a facilities building.

Prior to the meeting, Members of the Development Management Committee undertook a site visit.

The Development Management Team Leader advised the Committee that the applicant had agreed to amend the layout of pitches 7-12 due to concerns raised by the Arboricultural Officer that there was a potential risk to occupants and property from falling tree debris.

Resolved:

Approved, subject to the conditions as per the submitted report, the receipt of plans which are acceptable to the Director Place showing amended layout to pitches and amended wording to condition 01 to read;

- 01. The site shall only be occupied by caravans or tents **and only** between 1st March and 31st October each year. Reason: In the interests of the amenities of the area and to ensure that the cause of the site is for holiday purposes only. In accordance with the objectives of policies TU9, H13, L2 and L4 of the saved adopted Torbay Local Plan (1995-2011).

80. P/2014/0965/MPA Former Royal Garage Site, 4-24 Torwood Street, Torquay

The Senior Service Manager advised the Committee that on the instruction of the applicant consideration of the item had been withdrawn from this meeting.

81. P/2014/1062/MPA Gleneagles Hotel, Asheldon Road, Torquay

The Committee considered an application for demolition and redevelopment to form 36 retirement apartments for the elderly including communal facilities, access, car parking and landscaping.

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

Resolved:

That the application be refused for the reasons set out in the submitted report.

82. P/2014/1215/MPA Combe Pafford School, Steps Lane, Torquay

The Committee considered an application for the removal of a detached two storey temporary building and construction of an infill building to accommodate teaching space and vocational training.

Prior to the meeting written representations were circulated to Members.

Resolved:

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

83. P/2014/1231/MPA Jewson Ltd, St James Road, Torquay

The Committee considered an application for the demolition of Jewsons builders store and redevelopment to provide 24 no. residential apartments in a three storey building with 20 car parking spaces, a detached three storey office building and store to the rear of the site with parking. (Re-Submission of P/2014/0185).

In her introduction to the application, the Team Leader, Development Management reported that the financial viability of the site had been assessed by the Council's Senior Development Surveyor and that it had been determined and agreed with the developer that S106 contributions of £30,000 were affordable.

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

Resolved:

Approved, subject to the conditions which are delegated to the Director of Place and S106 agreement in terms recommended in the officer report to secure payment of £30,000 S106 contributions.

84. P/2014/1107/PA Westbourne Hotel, 106 Avenue Road, Torquay

The Committee considered the change of use from a hotel to a house of multiple occupation (HMO) for the purposes of accommodation for staff in the employ of Rew Hotels Limited.

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

At the meeting Stanley Weedon and Janet Caunter addressed the Committee against the application and Tim Rew, Charles Large and Steven Long addressed the Committee in support of the application. In accordance with Standing Order B4, Councillor Amil addressed the Committee.

Resolved:

That the application be approved subject to revised conditions:

- i) The building shall only be occupied by persons in the employ of Rew Hotels Limited, under contract of no less than 19 hours per week;
- ii) This permission is personal to Rew Hotels Limited. If the property is sold, the use hereby permitted shall cease and the property must revert to a hotel;
- iii) At all times whilst the approved use is in operation there shall be a suitably qualified resident manager/supervisor present;
- iv) An up-to-date register of all residents in occupation be kept and available for inspection by the Local Authority upon request; and
- v) The Local Authority seeks a financial contribution (to be secured by a S106 obligation) from the applicant to pay for the monitoring and enforcement of the use hereby approved.

Chairman/woman

Agenda Item 5

Application Number

P/2013/0785

Site Address

Wall Park Holiday Centre
Wall Park Road
Brixham
Devon
TQ5 9UG

Case Officer

Matt Diamond

Ward

Berry Head With Furzeham

Description

Erection of 165 dwellings (including 25 affordable); touring caravan park (including facilities building with office, cafe, laundry room, showers, toilets and 2-bed managers flat, 12 no. camping pods, 59 permanent touring caravan pitches, associated access and parking); community sports pitch (to be used annually as an overflow touring caravan park/campsite for 69 pitches during June, July and August); changing & shower facilities building for community sports pitch with associated access and parking; landscape and ecological enhancement works (including bat barn, hedgerow planting and footpaths); associated pumping stations, roads, footways/cycleways, new vehicular access onto Centry Road and alterations/widening of existing access onto Wall Park Road; demolition of existing buildings (including former holiday park buildings and dwelling - 53 Wall Park Road) (Full Application) (Revised Scheme)
(This application is a departure from the Adopted Torbay Local Plan 1995-2011)

Update Report

This application was approved at committee on 30.09.2014, subject to: further details being submitted in relation to surface water drainage; the signing of the s106 agreement; the submission of satisfactory information to show that the access on Centry Road is safe and deliverable; and the final drafting and determination of appropriate planning conditions. These issues were to be delegated to the Director of Place in consultation with the Chairman and ward Councillors. A time limit of 3 months was placed on the surface water drainage details and s106 agreement, otherwise the application must be reconsidered in full by committee. The minutes of this meeting have been circulated to Members.

Within the 3 month time period, a further extension of time was granted by Members at the 8th December committee in order to provide more time for officers to negotiate and complete the s106 agreement. This extension period elapses on 08.03.2015.

To provide an update on the above matters, further drainage details were submitted in November 2014 and Engineering officers were satisfied with this information, subject to further details being secured by condition. With regards to the access on Centry Road, a meeting was held with the Chairman and ward

Councillors on 23.10.2014 to review additional plans that had been provided by the applicant to demonstrate that the access on Centry Road is safe and deliverable. The plans were agreed, subject to further highway safety works at the Gillard Road/Centry Road junction, comprising traffic calming measures and pedestrian warning signage. Draft conditions have been provided to the applicant for comment.

With regard to the s106 agreement, much of the discussions has focussed on agreeing an appropriate deferred contributions overage clause should the viability of the scheme improve at implementation and during construction. This clause was agreed by the applicant on 03.03.2015. The application is now being brought back to committee in full in accordance with the provisions of the original decision, in order to seek approval of a further 3 month extension to finalise the agreement. Now that the overage mechanism has been agreed, it is expected that the s106 agreement will be signed within this time period.

There are no material considerations since the original committee decision that alters the recommendation to approve the scheme below.

Executive Summary/Key Outcomes

This full planning application proposes the redevelopment of the former Wall Park Holiday Centre in Brixham and surrounding land. The holiday centre is disused and the buildings are derelict. It is, in part, a brownfield site. However, the site is in a highly sensitive location within the South Hams Area of Outstanding Natural Beauty (AONB) and within close proximity to the greater horseshoe bat roost site at Berry Head, which is a Special Area of Conservation (SAC) protected by national and European legislation.

The proposals are to develop 165 dwellings on the brownfield part of the site and two fields either side of the access from Wall Park Road, which would itself be retained and widened. To the southeast, a new touring caravan park would be provided, including a new facilities buildings, and a new community sports pitch with changing facilities accessed off Centry Road. The undeveloped land to the northeast and southeast would be used as grazing land for Red Devon cattle, with new hedgerows and a field for growing cereal crops to provide a winter seed source for cirl buntings. The cattle grazed pasture would provide a foraging area for greater horseshoe bats and strengthen the bat corridor between the roost and surrounding countryside. A bat barn would also be built and a 25 year management plan is proposed.

The amount of housing has reduced by just under 25% from the previously refused application in January 2011, subsequently dismissed at appeal, by 54 dwellings from 219, and the proposal no longer includes a 60 bed care/nursing home. However, whereas the previous application proposed to move the existing caravan park business on the site without upgrading facilities, the current application proposes a new high quality caravan park with 59 pitches and 12

camping pods; the new facilities building would also include a cafe. The community sports pitch is proposed to meet the needs of local sports clubs and would be used as an overflow site for the caravan park during June, July and August. The land would be regraded and drainage installed. No floodlighting would be allowed, due to the ecological constraints.

Two extensive consultations have taken place on the application, which have shaped and informed the current proposals. In particular, it became clear that the removal of one of the proposed sports pitches was required in order to provide a greater amount of grazing land to mitigate the impact of the development on greater horseshoe bats. In addition, the Torbay Design Review Panel has helped improve the design of the residential area in particular, and the development as a whole.

The revised scheme is considered to provide a satisfactory balance of planning benefits and is therefore considered to be a sustainable development. It would retain a high quality tourism use on the site and deliver a new community facility, as well as 25 affordable homes. It would deliver significant ecological enhancements and a high quality designed housing development. The landscape character of the undeveloped area of the site would be improved to the benefit of the AONB, whilst new hedgerow and tree planting would screen the residential development in local to medium distance views. Therefore, there are considered to be exceptional circumstances to allow the development within the AONB.

Recommendation

Conditional approval; subject to the applicant submitting further details in relation to the proposed surface water drainage strategy, which are acceptable to the Director of Place, or an alternative surface water drainage strategy which is acceptable to the Director of Place, within 3 months of the date of this committee or the application be reconsidered in full by the committee; and subject to the signing of a s106 legal agreement in terms acceptable to the Director of Place within 3 months of the date of this committee or the application be reconsidered in full by the committee; final drafting and determination of appropriate planning conditions delegated to the Director of Place.

The recommendation above is made on the basis of the Appropriate Assessment that has been undertaken in accordance with the Habitats and Species Regulations 2010 ('the Habitats Regulations') being signed and agreed with Natural England. If this has not taken place before the committee meeting the above recommendation will necessarily need to ensure that planning permission can only be granted if Natural England agrees the Appropriate Assessment. If Natural England objects to the Appropriate Assessment, the matter will be referred back to committee (probably in October). Natural England has a statutory duty to comment on the Appropriate Assessment by 03.10.2014.

Statutory Determination Period

The application was validated on 22.10.2013. An extension of time to determine the application was agreed to 23.08.14. As the revised proposals were not submitted to the LPA until 10.07.2014, it was not possible to determine the application by the agreed date. A further extension of time has not been agreed because the applicant is protecting their right to appeal the application for non-determination within the agreed time period. Officers will continue to seek to agree a further extension of time with the applicant in order to ensure the LPA's current performance levels remain good.

Site Details

The site comprises 53 Wall Park Road (a detached dwelling), the former Wall Park holiday centre and surrounding fields. The total site area is 17.34ha. The brownfield area of the site that includes the buildings and hard surface areas of the former holiday centre and 53 Wall Park Road is 5.58ha. The holiday centre has been closed since December 2008 and the buildings on the site are in a dilapidated condition. There have been numerous reports of break-ins and vandalism over recent months, and a large fire broke out on the site in June.

The fields are bordered by hedgerows and there are numerous trees scattered throughout the site. One of the fields in the southwest corner of the site is used as a permanent touring caravan park, whilst an adjoining field provides overflow space for the park, which can be used for a maximum of 9 weeks per year. The permanent site is 0.53ha and provides space for 30 caravans. The overflow field is 2.05ha and can accommodate 110 caravans (there is also a stone building on the southwest boundary). Other fields to the southeast were formerly used as a pitch and putt/miniature golf course in connection with the holiday centre.

The site is bounded by: fields, allotments, a football club playing pitch and detached dwellings fronting Wall Park Road and backing onto the site to the northwest; a County and Local Wildlife Site ('Berry Head Farm - Landscope') to the northeast; Gillard Road to the southeast; and Centry Road to the southwest. The only vehicular access to the former holiday centre is from Wall Park Road between Nos. 53 and 57 Wall Park Road. The touring caravan park is accessed via a gravel entrance on Gillard Road. A separate track off Gillard Road provides access to the overflow field. There are no other access points except for field gates and a track from Wall Park Road past the football club.

The wider area is characterised by: residential development to the northwest; Berry Head Country Park and fort to the northeast; Landscope Holiday Park and fields within the Coastal Preservation Area to the southeast; and residential development and sports pitches to the southwest, including the rugby club. Berry Head Country Park is part of the South Hams Special Area of Conservation (SAC), which is protected under the European Union's Habitats Directive. It is also a Site of Special Scientific Interest (SSSI) and within the Coastal Preservation Area. The fortifications at Berry Head are scheduled monuments.

The site and wider area to the northeast and southeast are within the South Devon Area of Outstanding Natural Beauty (AONB). In addition, the undeveloped parts of the site to the northeast and southeast are designated as Countryside Zone in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan'). The former holiday centre and fields within the site which are directly behind the football club pitch and dwellings fronting Wall Park Road are not designated as Countryside Zone, and are therefore within the built up limits of Brixham. The area of the site designated as Countryside Zone is approximately 9.94ha, whereas the remainder is approximately 7.4ha.

The touring caravan park, overflow field and two adjacent fields to the southwest are designated in the Local Plan for the provision of new playing fields and related facilities. The explanation text states that the proposal at Centry Road comprises a new playing field and related changing facilities for Brixham College, and where practicable the pitch and facilities may also be available to serve the local community on a dual use basis.

The Torbay Local Plan - A landscape for success (Proposed Submission Plan, February 2014) ('the new Local Plan') was submitted to the Government for examination at the end of July 2014. It has limited weight as a material consideration at present, but shows the emerging planning policies of the Council. It shows the site as still being within the AONB, but it and adjoining land is allocated as one of four Future Growth Areas in Torbay. No areas of the site are designated as Countryside Zone in the new Local Plan. The Future Growth Areas will deliver: a mix of housing; employment opportunities; essential infrastructure, including green infrastructure; a suitable range of recreational, leisure and tourism facilities; high quality, sustainable design; a strong sense of community, including local facilities; and appropriate phasing to balance provision of jobs, housing and infrastructure. The site is also located within a newly designated Mineral Safeguarding Area. These are aimed at safeguarding mineral resources for future generations, but do not preclude development. The new Local Plan makes it clear that development in this sensitive location should adhere to guidance for greater horseshoe bats and any proposals that may lead to likely significant effects on protected sites will only be permitted where no adverse effect on the integrity of the site can be shown. In addition, the new Local Plan is clear that development should be on the brownfield area only, unless there are significant benefits from development of a larger area.

The site boundary has been revised slightly since the application was originally submitted and it no longer includes a barn in the east corner of the overflow field, which is used by Tall Ships groups for storage purposes.

Detailed Proposals

The proposals have been revised since the original submission. The original proposals were submitted as a hybrid application (part full, part outline), whereas the revised proposals have been submitted as a full planning application. The

revised proposals are to demolish all of the existing buildings on the site and develop the following:

- o 165 dwellings (18 no. 2-bed, 84 no. 3-bed and 63 no. 4-bed) on the site of the former holiday centre
- o New touring caravan park (59 pitches and 12 camping pods), with facilities building incorporating 2-bed managers flat on fields to the north of the exiting caravan park overflow field
- o Community sports pitch used as an overflow site for the touring caravan park during June, July and August (69 pitches) on part of the existing overflow field, with a changing facilities building located next to the caravan park facilities building
- o Existing vehicular access to the site from Wall Park Road widened, following demolition of 53 Wall Park Road
- o New vehicular access to touring caravan park and community sports pitch on Centry Road
- o Associated parking and infrastructure for the dwellings, touring caravan park and community sports pitch
- o Associated landscaping and public open space
- o New footpaths through the site

In addition to the above, the following ecological enhancement measures are proposed:

- o 4.35ha cattle grazed pasture to provide foraging for greater horseshoe bats on fields around the edge of the site (northeast and southeast)
- o 0.52ha cereal crop field to provide a winter seed source for curl buntings on part of the existing overflow field
- o Bat barn for roosting bats within field used for cattle grazing to the east of the site
- o New hedgerows and trees following a management strategy aimed at enhancing the area for wildlife

Of the 165 dwellings, the applicant has agreed that 25 would be affordable. The tenure split would be 8 social rent, 8 affordable rent and 9 shared ownership. The 8 social rent would comprise 6 no. 3-beds and 2 no. 4-beds. The 8 affordable rent would comprise 5 no. 3-beds and 3 no. 4-beds. The 9 shared ownership would comprise 5 no. 2-beds and 4 no. 3-beds. Therefore, the size mix would be 5 no. 2-beds (20%), 15 no. 3-beds (60%) and 5 no. 4-beds (20%). This compares with the size mix overall of 11% 2-beds, 51% 3-beds and 38% 4-beds.

The height of the dwellings varies across the proposed development. The majority of the dwellings would be 2 storeys, whilst the dwellings bordering the undeveloped areas to the southeast would be 1.5 storeys. Four dwellings bordering the proposed grazing land to the northeast would be single storey bungalows. 12 of the dwellings in the centre of the site would be 2.5 storeys, with

accommodation provided in the roof space. The facilities building for the caravan park would be 1.5 storeys and the changing facilities building would be 1 storey.

The materials of the external elevations of the dwellings would comprise render, weatherboarding and some slate hanging on key facades. The intention is to finish the dwellings bordering the undeveloped areas to the southeast in earth colour renders, with timber boarding and slate hanging so that they blend into the hues of the existing boundary hedgerows and trees. All roofs would be slate (natural slate would be required). Windows would be white with some grey/green frames in key buildings. The dwellings bordering the undeveloped areas would have dark colour window frames.

The density of the residential area is 25 dwellings per hectare.

Summary Of Consultation Responses

Natural England (NE): Confirmed that an Appropriate Assessment is required in accordance with the Habitats Regulations to assess the implications of the development on the South Hams SAC, specifically its greater horseshoe bat and calcareous grassland interests. (An Appropriate Assessment has been carried out by the LPA and Natural England has been consulted in accordance with the Regulations. Natural England's comments on the Appropriate Assessment are awaited. The application must not be authorised until these are received and the LPA is certain that the development will not have an adverse effect on the SAC.)

The development should also be screened for likely significant effect on the Lyme Bay and Torbay candidate SAC. (The development has been screened and the conclusion is that there is unlikely to be a significant effect either alone or in combination on the Torbay cSAC.)

NE commented that the amount of grazing land for greater horseshoe bat mitigation/enhancement in the original scheme was less than the 2010 application. Therefore, this should be increased and questioned the proposal for two full sized sports pitches at this location. Welcomed increase of grazing land provision in revised scheme and recognised there were competing interests why this could not be brought up to the level of the 2010 proposals.

NE recommended cirl bunting measures are scaled back in original scheme in favour of the greater horseshoe bat interest. Whilst NE accepted the amount of grazing land in the revised scheme, it recommended the cirl bunting field is changed to cattle grazing should the management regime for the cirl bunting field prove impractical.

NE requires that the ecological mitigation measures must be explicit and secured by condition/s106 agreement. The time period of the Landscape and Ecological Management Plan (LEMP) was originally too short at 15 years. NE welcomes the increased period of 25 years, but expressed concerns with how the mitigation

and enhancement measures will be managed after this period. If the mitigation measures ceased after 25 years, this would lead to an unmitigated impact on the SAC.

NE has welcomed ecological monitoring programme in revised proposals. Also, welcomed the change of access to the caravan park from Gillard Road to Centry Road, as it will avoid the risk of severing the commuting habitat of greater horseshoe bats and disturbing foraging activity. Also, welcomed prevention of security lighting on dwellings.

Environment Agency: Objected to the original submission proposals, due to lack of information of how surface water from the site will be managed. Withdrew objection following submission of surface water drainage strategy as part of the revised scheme. Recommended management of drainage strategy be covered by condition and this be by infiltration techniques alone.

English Heritage: Provided comments on the original scheme only: Stated they are generally content the proposals will not introduce any major new visual intrusions to the settings of the Scheduled Berry Head military installations. Pleased with provision of grazing land on undeveloped areas of site. Support archaeological conditions.

Sport England: Objected to original proposals, due to lack of information on pitch/changing rooms specifications and concerns with the use of the community sports pitch as an overflow field for the caravan park. Maintains objection to revised scheme, due to loss of one of the pitches and lack of information on ground conditions, pitch specification (including size requirements) and how community sport will be formalised on the site. Also, still concerned by proposed use of the pitch as an overflow field for the caravan park and how it will be managed/maintained to ensure it is fit for purpose. Also, expressed concerns with the internal design of the proposed changing facilities.

RSPB: Berry Head is an important site for cirl buntings, but the future of cirl bunting at Berry Head is uncertain as it depends on artificial feeding over winter. This could be made worse by increased predation from cats associated with the proposed development. Therefore, the application is considered acceptable only if the cirl bunting mitigation and enhancement measures are provided. Other comments raised similar issues to Natural England, but additional grazing land must not be at the expense of cirl bunting mitigation/enhancement measures. Bat and bird nesting boxes should be incorporated into the residential development.

RSPB has expressed uncertainty over the management of the cirl bunting field when commenting on the revised scheme and suggested artificial supplementary feeding should be considered. Raised similar issues to Natural England re impact on Berry Head SAC and time period of LEMP. Consider that grazing land provision should still be increased to the amount of the 2010 application

(although not at the expense of cirl buntings). This could be achieved by removing the sports pitch/overflow field, or by moving the sports pitch further southwest. Suggested amendments to LEMP. The RSPB would like to receive a copy of the annual summary report of the ecological monitoring.

South West Water: No objection subject to foul flows only being connected to the public sewer. No objection or comment to revised scheme.

South Devon AONB Manager: Provided comments on the original scheme only: Landscape and habitat measures are well considered and should not be diluted. The sports pitches are unwelcome and should be replaced by further habitat provision. No objection to un-built fields along the north of the site being developed for housing, as provides an opportunity to roll back development away from the coastal edge. Ideally hedges should be retained as a public realm feature (this can be controlled in the s106 agreement). Question short timeframe of LEMP. Public access should not be allowed to the grazing/cirl bunting fields - supports paths providing access to the south of the development.

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: The development should be constructed to meet full Secured by Design (SBD) standards. Concerns over the link between the residential development and caravan park in the original scheme. This was addressed in the revised proposals by relocating the facilities building adjacent to Centry Road. However, the PALO still has concerns with the footpath link at the southwest end of the residential development, as it will allow strangers into the area and people with criminal intent could therefore go unnoticed and unchallenged.

(The footpath link provides pedestrian permeability, which encourages people to walk rather than drive in the interests of health and climate change. It also provides the opportunity for a circular recreational route for residents that may dissuade them from visiting Berry Head Country Park for recreation purposes and the resulting impact on the protected calcareous grassland. However, should Members agree with the PALO, a condition could be added if the application is permitted requiring the closure of this footpath link or details of how it could be made safer.)

The PALO also commented that: facilities for older children should be provided; there is scope for further 'pepper potting' of the affordable dwellings; and it would be preferable not to have the footpath through the courtyard between dwellings 31-34. A number of other minor issues have been addressed by the applicant.

Torbay Coast and Countryside Trust (TCCT): Concerned by reduction of grazing land for greater horseshoe bats in original scheme proposals compared to the 2010 application. Considered it essential that additional grazing land was sought. Welcomed the increase of grazing land in the revised scheme and recognised there were competing interests why this could not be brought up to the level of

the 2010 proposals.

The TCCT has raised concerns with increased recreational pressure from new population in residential development on Berry Head protected grasslands. Therefore, recommended a financial contribution to TCCT to provide appropriate mitigation. These concerns were maintained in comments made on the revised scheme and reference was made to a recent report highlighting this issue.

The TCCT welcomes the bat barn, but suggested it was moved off-site next to TCCT proposed office to reduce risk of vandalism/arson. Have now agreed a management/monitoring strategy for the curl bunting enhancement field with RSPB. There must be no lighting of the sports pitch. Hazel dormouse surveys should be included in the LEMP. Welcomed green infrastructure provision.

Torbay Design Review Panel: Provided comments on the original scheme only: Welcomed landscape led approach, but encouraged this at micro level as well as macro level. Recommended primary street should follow 'L' shape to aid orientation and legibility. Questioned cul-de-sacs and encouraged pedestrian permeability. Encouraged better street design, incorporating higher quality soft landscape, and more diverse mix of housing. Noted proposals lower than 2010 application. Queried location of recreation field and bat barn. Stated the materials utilised need to be genuine natural materials, e.g. real slate. Pointed out difficulties with hybrid application.

Housing Services: Disappointed policy compliant level of affordable housing cannot be provided, but accept 15% is the maximum figure the development can provide based on the IVA. The acceptance of the reduced figure is subject to there being a satisfactory deferred contribution arrangement in place.

Strategic Transportation: Provided comments on revised scheme only: No objections in principle, although a few errors have been identified in the Transport Assessment modelling. This is not expected to have a significant effect though. Identified a number of improvements to existing highways that must be provided to minimise the impact of the traffic generated by the development on the local highway network. These include signage, junction improvements at Rea Barn Road/Higher Ranscombe Road and traffic signals updated to MOVA at Burton Street/Rea Barn Road. (These shall be secured as site acceptability matters in the s106 agreement.)

Requested amendments to Wall Park access, however it is considered that this could be dealt with by condition if the changes are necessary. Raised concerns with maintenance of verge strips in residential development, however landscape within the residential area will be maintained via a service charge on the dwellings, which can be secured in the s106 agreement. Raised concerns with the road surface materials, but again these details can be dealt with by condition.

Requires a £2,000 bond, returnable after 5 years, to safeguard against the implementation of parking restrictions on surrounding roads in case there is overspill parking from the proposed community sports pitch, e.g. if there are matches. The SPD sustainable transport contribution would be used to: improve strategic cycling infrastructure from Brixham to Churston, Broadsands and Hill Head; improve local walking and cycling links to the town centre, harbourside and local schools; and provide a bus shelter on Wall Park Road.

Commented on objections received from public to revised access to caravan park on Centry Road instead of Gillard Road: Whilst the access from Gillard Road is preferred, the access from Centry Road would not be unacceptable in terms of traffic and road safety implications along Centry Road and Higher Ranscombe Road. Also, aware there are ecological constraints to achieving this. However, the proposed footpath should be extended to provide a pedestrian route at the southern end of Centry Road, where there is no existing provision (the applicant has now provided this).

A Travel Plan should be submitted prior to commencement of the residential development. This can be secured by condition.

Engineering Service Manager: Recommends a revised surface water drainage strategy with smaller soakaways to avoid solution features in the underlying limestone, which could collapse if large scale soakaways are used. Requires trial holes and infiltration testing in the locations of the soakaways, and detailed design of soakaways in accordance with Building Research Establishment Digest 365. The sustainable drainage system and soakaways must be designed to cater for the critical 1 in 100 year storm event plus an allowance for climate change. In addition, if flooding is predicted the developer must demonstrate how floodwater/overland flow will be dealt with to avoid flooding of properties on the site and land and properties off the site. These details must be provided before planning permission is granted instead of by condition. (The applicant has submitted additional information and further comments are awaited.)

Arboricultural Officer: Notes several trees species in the landscaping proposals which are unsuitable for the site and should be varied, e.g. Rowan, Cherry and Tree of Heaven. No trees are planted in the highway network and this should be adjusted to allow for appropriate street planting. No details of trees pits are provided, which should link to sustainable drainage solutions. The Landscape Management Plan should be amended to allow for regular watering. A plan of pre-commencement tree surgery operations should be prepared and the protection fencing plan must be amended. Details of tree staking and tree planting in the caravan park required. All these issues can be addressed by conditions.

Natural Environment Services: The emerging Torbay Sports Strategy notes there is surplus capacity and underused similar sports facilities in Brixham, therefore

the proposed playing pitches are considered not needed. Improvements to existing facilities would be preferred. In addition, there is no need for play provision on the site, although there is a community desire to improve play provision at Astley Park. (No comments provided on revised scheme.)

Senior Historic Environment Officer: Some areas of the site have high archaeological potential. Therefore, archaeological investigation should be carried out before development works take place. This can be secured by condition.

Building Control: Radon protection required. Fire brigade access may not comply with building regulations, therefore reassessment required.

Community Safety: (No response to consultations, but are seeking the demolition of the buildings on the former holiday centre as soon as possible to put an end to break-ins and ongoing problems.)

Brixham Town Council: Provided comments on revised scheme only: Members of the TC praised scheme overall, but recommend refusal on following grounds: access to caravan park on Centry Road would cause vehicular issues in Centry Road and beyond, therefore should be moved close to junction with Gillard Road to avoid Higher Ranscombe Road; the financial contribution to Brixham had not been finalised, but there should be more contribution than presently put forward; and the cirl bunting field should be reduced to provide one more sports pitch. It was also suggested that if the one way traffic system on Centry Road was changed, this would aid in reducing traffic issues in Higher Ranscombe Road.

Torbay Local Access Forum: No comments.

Summary Of Representations

There were 8 representations received for the original scheme. 5 of these were objections, 2 in support and one neutral. The following material considerations were raised:

- o Affect on AONB
- o No current need for housing
- o Will not be effective in promoting tourism, sustainable economic growth or employment in local area
- o Contrary to Landscape, Nature Conservation, Tourism and Environmental Protection policies in Local Plan
- o Contrary to policies in the new Local Plan
- o Contrary to NPPF
- o Height of buildings and visual impact
- o Impact on greater horseshoe bat and cirl bunting habitat, and Berry Head SAC
- o Developing fields behind housing on Wall Park Road would cause urban

- o sprawl
- o Presumption in favour of sustainable development does not apply
- o High quality tourism accommodation required
- o Affordable housing should be near business parks
- o Previous decision state the site is unsuitable for housing
- o Risk of subsidence from use of soakaways
- o Impact of traffic on Higher Ranscombe Road (2 schools and public swimming baths)
- o Previous appeal decision
- o New Tall Ships storage barn will vastly improve security of heritage equipment
- o Proposals would provide more balanced mix of uses to a brownfield site
- o Overdevelopment
- o Increased traffic
- o No use of sports pitches during June, July and August
- o Light and noise pollution
- o Not enough employment provision
- o Impact of construction traffic on local roads
- o Road and footpath improvements required on Centry Road
- o Holiday centre is currently an eyesore and causes vandalism and noise
- o Proposals would enhance the area
- o Tourist facilities would attract high spend visitors
- o Impact on local infrastructure
- o Whole site should be developed for tourism
- o Departure from Local Plan to provide housing
- o Development should not encroach further into AONB/Coastal Preservation Area
- o Not sustainable development
- o Impact of traffic on Centry Road
- o Already natural play space on the site

There were 19 representations received for the revised scheme. 18 of these were objections and one was neutral. The main objection was the revision to the plans that moved the access to the caravan park from Gillard Road to Centry Road. The following material considerations were raised:

- o Impact of increased traffic on local roads
- o Overlooking of 67 Wall Park Road
- o Visual impact on Berry Head Country Park
- o Environmentally unsustainable
- o No demand for this kind of housing development
- o Land required for employment
- o Impact on AONB
- o Not enough affordable housing
- o Private housing will attract older people leading to imbalance in community

- o Impact on health infrastructure
- o Not enough tourism
- o Caravan access inadequate
- o Affect on AONB
- o No current need for housing
- o Will not be effective in promoting tourism, sustainable economic growth or employment in local area
- o Contrary to Landscape, Nature Conservation, Tourism and Environmental Protection policies in Local Plan
- o Contrary to policies in the new Local Plan
- o Contrary to NPPF
- o Height of buildings and visual impact
- o Impact on greater horseshoe bat and cirl bunting habitat, and Berry Head SAC
- o Developing fields behind housing on Wall Park Road would cause urban sprawl
- o Presumption in favour of sustainable development does not apply
- o More high quality holiday chalets required
- o Risk of subsidence from use of soakaways
- o Not enough housing for older people
- o Impact of traffic on Higher Ranscombe Road (2 schools and public swimming baths)
- o Previous appeal decision
- o Impact of traffic on character of Centry Road
- o Centry Road should be widened
- o Site should be opened up for public recreation uses
- o Lack of supporting infrastructure
- o Overdevelopment
- o Concern with geotechnical stability
- o Poor access
- o Departure from Local Plan
- o Camp should not be built upon due to its natural beauty/too many dwellings
- o Impact on other wildlife
- o Support proposal except access on Centry Road
- o Impact on privacy and loss of light to 69 Wall Park Road
- o Noise from sports pitch

Relevant Planning History

DE/2013/0018/ZP: Form 170 dwellings; touring caravan site with up to 110 pitches including managers accommodation and facilities building; rugby and football pitches including changing facilities for sports pitches and limited parking; separate accesses on Centry Road for sports pitches and touring caravan site; access from Gillard Road to serve the Tall Ships workshop and bat barn; public open space; significant area of grazing land and ecological enhancements including an additional bat barn (pre-application enquiry): Split decision

06.06.2013

P/2014/0446/SCR: Request for Screening Opinion for the redevelopment of former Pontin's Holiday Centre, Wall Park, Brixham, for mixed uses including residential, tourism, recreation and open space: EIA required 17.12.2012

P/2012/1114/SCO: Request for Screening & Scoping Opinions for the redevelopment of former Pontin's Holiday Centre, Wall Park, Brixham, for mixed uses including residential, tourism, recreation and open space: Scoping reply 17.12.2012

P/2010/0541/MPA: Revised plans and details to application P/2010/0541/MOA including- removal of 14 tourist lodges and 12 houses in the South West field, relocation of children's play area (LEAP), relocation of proposed touring caravans and various alterations to masterplan layout. Revised description Outline application for demolition of the bungalow on Wall Park Road and all buildings on site and the erection of up to 219 residential dwellings, a 60 bed care/nursing home (C2 Use), 2 number. bat barns (1 of which to be a heated winter bat roost), use of land for touring caravans/camping and associated administration facilities, alteration of access onto Centry Road and alteration of access onto Wall Park Road together with the provision of formal (LEAP) and informal public open space, landscape and wildlife mitigation measures and associated works .THIS IS A DEPARTURE FROM THE TORBAY LOCAL PLAN: Refused 06.01.2011 (Appeal dismissed 19.12.11)

P/2008/1340/CE: Certificate of lawfulness for an existing use of area 1 as a miniature and novelty golf course; area 2 as a football pitch/overspill car park/hosting special events; area 3 as a caravan/camping park: Approved 17.09.2009

P/1996/0959/CE: Certificate Of Lawfulness For An Existing Use As A Camping Site For Touring Caravans And Tents - 30 Units: Approved 30.01.1997

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Development
2. Ecological Impacts and Proposed Mitigation
3. Design and Landscape
4. Visual Impact
5. Impact on Amenity of Neighbouring Properties
6. Impact on Local Highways and Parking
7. Drainage
8. Housing Mix and Affordable Housing
9. Community Sports Pitch
10. Phasing and Delivery

11. Archaeology
12. Contamination
13. Noise

1. The Principle of Development

The relevant Local Plan Policies concerning the principle of development are considered to be HS, H2, TUS, TU9, TU10, RS, R3, LS, L1, L4 and EP6 (Nature Conservation Policies are addressed separately in Section 2 below). The appeal decision for the previous application is also a material consideration, as is the NPPF published after the appeal decision was made. The new Local Plan Policy SS2 allocating the site as a Future Growth Area is a material consideration, but with limited weight at present due to objections which have been received. The presumption in favour of sustainable development in the NPPF does not apply, as an Appropriate Assessment is required in accordance with the Habitats Regulations (paragraph 119).

The application is for a mixed use development split into four component parts: (1) residential development; (2) touring caravan park (with facilities building); (3) community sports pitch (functioning as an overflow site for the caravan park 3 months per year), with changing facilities building; and (4) cattle grazing land/cereal crop field (with bat barn) as biodiversity mitigation/enhancement measures. The delivery of the caravan park, community sports pitch/changing facilities building and biodiversity mitigation/enhancement measures are entirely dependent on the delivery of the new housing, as they are not financially viable to deliver separately. The touring caravan park is estimated to have a negative development value of c.£1 million, the community sports pitch and changing facilities building would cost £476,370 to build with limited income potential thereafter, and the biodiversity mitigation/enhancement measures cost £880,899.77, and are expected to rise to around £960,900 (see s106/CIL section below). This represents an investment into Brixham of £2,437,270. This is in addition to 25 affordable dwellings and £244,269.50 towards local infrastructure. All these public benefits would be subsidised by the new housing and the Local Planning Authority could make it a requirement that they are delivered at an early stage in the overall development. This is considered to be a material consideration.

The application differs from the previously refused application by removing the care home and reducing the amount of housing by 54 dwellings (representing just under 25% reduction), thus reducing the amount of development on the former holiday centre and adjoining fields to the northwest. In addition, whereas the previous application proposed to relocate the existing touring caravan park on the site, this application proposes to develop a higher quality caravan park, with facilities building, 59 pitches with electric hook ups and drainage, and 12 camping pods. The facilities building would have washrooms, laundry facilities, a reception and cafe. The current application also includes a community sports

pitch.

Notwithstanding tourism and landscape protection Policies TU10, LS and L1, the development is considered to accord with Local Plan Policies HS, H2, TUS, TU9, RS, R3 and EP6: The development would provide a sustainable housing development, new tourist facilities and a new playing field and associated changing facilities, in accordance with the allocation for a new playing field in Policy R3. In addition, the development would result in the beneficial reuse of a vacant, derelict site in accordance with Policy EP6. It is also worth pointing out that the 2010-2015 Strategy 'Turning the Tide for Tourism in Torbay' highlighted that the demand for basic chalet and caravan holiday park accommodation has been in significant long term decline, whereas there is an increased demand for premium caravan/lodge accommodation. The application has responded to this by proposing a higher quality caravan park.

However, Local Plan Policy TU10 resists the change of use or redevelopment of existing holiday centres where:

1. the proposals would result in the loss of a site which offers a good range of facilities and makes a significant contribution to the stock of holiday accommodation in the resort;
2. the site offers potential for development and/or refurbishment to provide an important level of tourist accommodation and related facilities;
3. the site is a prime location for holiday use (i.e. coastal, rural or close to major tourist attractions);
4. the loss of a site and introduction of a new use would be detrimental to the general holiday character of the locality, or its loss would have a detrimental effect on nearby chalet, caravan or camping sites by changing the character of the area; or
5. the application is contrary to countryside and landscape policies set out in the Local Plan.

The Inspector for the appeal of the previous application dismissed 1, 3 and 4 out of the above criteria. He concluded that the holiday centre had already been lost as a tourist destination and serves no useful purpose. The location of the site away from key town attractions and limited visibility of the sea means it is not a prime location for holiday use. Lastly its loss would not be detrimental to the holiday character of the area and could actually benefit suppliers of similar facilities in the area. However, he considered the application failed criteria 2 and 5.

In respect to criterion 2, the Inspector agreed with the appellant that it was not a viable option to refurbish the existing accommodation or provide a number of other tourism related uses. However, the Inspector considered the site retains some potential for limited reuse, based on the fact that the appeal scheme included proposals for a touring caravan/camping site for up to 140 units. The

Inspector considered the former holiday centre could be redeveloped to provide quality touring pitches with hard standings. However, in making this decision, the Inspector does not appear to have considered the viability of this. In particular, whereas the proposals were to relocate an existing caravan park business with basic facilities from one field on the site to another, a redevelopment of the former holiday centre for a similar use would need to factor in the costs of demolishing the existing buildings and clearing the site. The costs of this are significant and therefore it is considered unlikely that such a use would be viable. Furthermore, it would not achieve the quality tourist facilities the Council is seeking.

Therefore, it is considered that criterion 2 can also be dismissed. This also takes into account that the Inspector did not believe the site would be sufficiently attractive to support a major tourism investment. In addition, by developing the site for housing, this will deliver a high quality caravan park elsewhere on the site.

In respect to criterion 5, the development would not be contrary to Policy L4, which protects the countryside from development: None of the proposed housing would be located within the Countryside Zone and development for touring caravans and tents, and development associated with outdoor sport and recreation is permitted. However, the Inspector concluded that the previous application would harm the landscape and scenic beauty of the AONB, contrary to Policies LS and L1. This is despite recognising that the proposals would enhance the landscape of parts of the site through the biodiversity mitigation/enhancement measures. The Inspector based his view on the fact that the landform changes from steeply sloping north of Wall Park Road to gently sloping to the south and this coincides with the change in land use from urban to mainly rural. The Inspector considered the development would be visible from parts of the AONB to the east and would appear to encroach into the open landscape. Whilst the extent of the built development in the new application is the same as the previous application, there are a number of differences that are considered to reduce its impact. These and other material considerations listed below are considered to provide exceptional circumstances where major development can take place within the AONB, in accordance with paragraph 116 of the NPPF, and they are also considered to demonstrate that the development would be in the public interest:

- o The number of dwellings has been reduced from 219 to 165 (approx. 25% reduction), therefore the density has decreased from 33 dwellings per hectare to 25 dwellings per hectare. This has resulted in a less suburban, more landscape led development, with fewer and lower height dwellings around the periphery.
- o The care home which was the tallest and largest built element of the previous application, and was sited on the highest part of the site has been removed.

- o More tree planting is proposed to the northeast and southeast of the residential area to soften and screen views.
- o The existing holiday centre has become an eyesore that detracts from the scenic beauty of the AONB, and the undeveloped fields to the northwest behind the Wall Park Road dwellings are considered to offer little to the landscape quality and scenic beauty of the AONB.
- o The biodiversity mitigation/enhancement measures, including provision of new trees, hedges, hedge banks, cattle grazing land and cereal crop field for curlew buntings would enhance the landscape character and scenic beauty of a large area of AONB within the site. They would also enhance the biodiversity value of the site, including as a foraging area for greater horseshoe bats in the interests of the Berry Head SAC.
- o The application would replace the lawful use of the fields adjacent to Gillard Road for pitch and putt/miniature golf and caravan park/camp site with cattle grazing land, therefore returning this land to agricultural use. This would have the effect of drawing back the human uses away from the coastal edge.
- o The South Devon AONB Manager has been consulted and has no objections to the proposals (including development of the undeveloped fields behind the Wall Park Road dwellings).
- o The application would improve the tourism accommodation offer on the site by providing a higher quality caravan park and new community facilities in the form of the sports pitch.
- o The application would provide 25 much needed affordable dwellings in Brixham.
- o The residents and visitors of the development would increase expenditure in the town to the benefit of the local economy.
- o The public benefits of the scheme are only deliverable by being subsidised by the residential development and therefore cannot be disaggregated to other parts of the town.
- o The site is allocated as a Future Growth Area in the New Local Plan, although this can be afforded limited weight at present.

Therefore, for the reasons above the principle of the development is considered to be acceptable. Whilst each case must be determined on its own merits, Members have previously approved major developments within the AONB on the edge of Brixham. These include the former Dolphin Holiday Centre (191 dwellings, local centre and coastal improvements) (ref. P/2004/1032/MPA) and Riviera Bay Holiday Park (11 lodges with 216 parking spaces and 12 dwellings) (ref. P/2011/0470/MPA).

2. Ecological Impacts and Proposed Mitigation

The site is located within a strategic flyway and the sustenance zone associated with the South Hams SAC at Berry Head. The SAC is designated for its greater horseshoe bat roost site, and calcareous heath and grassland habitats. Critically

it is within 1km of the maternity roost at Berry Head. It is also within close proximity of the Lyme Bay and Torbay Candidate SAC (cSAC). Therefore, the proposed development has been screened to assess its likely significant effect on the SAC and cSAC in accordance with the Habitats Regulations. The conclusion is that the development is likely to have a significant effect on the SAC and therefore an Appropriate Assessment must be carried out of the implications of the development on the integrity of the site. However, the development is unlikely to have a significant effect on the cSAC, as construction impacts can be controlled by condition, foul water discharge would be less than the previous use and a sustainable surface water drainage strategy would be included in the proposals.

An Appropriate Assessment has been carried out on behalf of the Local Planning Authority. It has been informed by comprehensive bat activity surveys undertaken between 2008 and 2012 by the applicant's ecological consultants. The Appropriate Assessment includes a number of measures designed to mitigate the impact of the development on the SAC. These must be secured by planning conditions or s106 agreement. The measures include: planting new hedgerows to subdivide the existing large fields into sheltered bat foraging areas; provision of cattle grazed pasture; a bat barn for the provision of new roosts; and a 25 year Landscape and Ecological Management Plan (LEMP). Together, these measure would enhance the site for greater horseshoe bat foraging and commuting habitat. In addition, a financial contribution towards the management of the protected heath and grassland at Berry Head would be secured to mitigate the impact of the additional people from the development using Berry Head for recreational purposes, such as for dog walking.

The Ecology chapter of the Environmental Statement submitted with the application identified other bat species, hazel dormice and cirl buntings as other protected species that had either medium or high sensitivity on the site. The mitigation designed for greater horseshoe bats would also benefit these species. In addition, a small field would be set aside for cereal crop growing to provide a winter feed source for cirl buntings. Therefore, the proposals would enhance the habitat provision on the site for these species also.

The Appropriate Assessment requires a condition to secure a Construction Environmental Management Plan (CEMP) prior to commencement of any development works. This would safeguard biodiversity interests during the construction phase of the development. There would also need to be strict controls over lighting in the interests of all bats species. This can also be secured by condition.

Agreement and sign off of the Appropriate Assessment is currently awaited from Natural England. The proposed development cannot be approved until Natural England's comments on the Appropriate Assessment have been received. When this process is completed the LPA will have made certain that the proposals will

not adversely affect the integrity of the South Hams SAC.

Therefore, subject to Natural England's approval of the Appropriate Assessment, the proposed development is considered to accord with Local Plan Policies NCS, NC1, NC2, NC3 and NC5, and paragraphs 109 and 118 of the NPPF.

3. Design and Landscape

The design of the proposed development is considered to be acceptable. The original scheme proposals were assessed by the Torbay Design Review Panel, which made a number of recommendations. These focused on improving the landscape led approach at the micro - 'street' - level, not just at the macro level. They also recommended amending the layout and hierarchy of streets slightly within the residential area in order to improve legibility and provide a simpler, more easily understood layout. This hinges on the provision of a primary 'L' shaped street through the residential development, with key nodal points of greenspace at the ends and on the corner of the 'L'. A southern 'play trail' along the longer arm of the 'L' is also provided comprising a long, linear green space with trees, shrubs and natural play equipment. A second shorter play trail is provided further north near to the affordable housing, which helps to break up the development into horizontal parcels of development with structural green space/tree planting between. This helps to soften and screen the development in views.

Following the TDRP, officers requested that detailed proposals were submitted for the whole development, not just the first phase of housing, in order to provide a greater level of certainty of what would be delivered. This took into account the location of the site within the AONB. It extended to the caravan park and sports pitch, so that Members would know exactly how many touring caravan pitches would be provided compared to the existing. Consequently the applicant submitted the revised proposals as a full application.

Officers also did not wish to see a predominance of standard house types in the scheme. Bespoke house design was sought in order to set the scheme aside from other housing developments, and enhance local distinctiveness and sense of place. The applicant responded by including a number of design details on the dwellings, such as interestingly shaped gables, porches, bellmouth window detailing and corbel detail to eaves. The dwellings proposed along the southeast edge of the housing development have also been designed to have a more rural, farmyard character set around courtyard spaces that reflect the character of a traditional farmyard. This ensures a softer rural edge to the development, helping it integrate with the natural environment. A varied materials palette is also proposed to reflect the character of South Devon. The predominant material is render, but with liberal use of timber and some slate cladding. Plinths would be of black brickwork with black mortar and window cills would be made of stone. All roofs would have slate tiles and it would be a requirement of planning permission

that these are natural slate. Should planning permission be granted, planning conditions would be used to agree the colour and specification of all building materials.

As identified earlier in this report, the new Local Plan has designated four Mineral Safeguarding Areas to the south of Torbay and the site is located within one of these areas. The areas have been designated for their Devonian limestone resource. New Local Plan Policy M3 encourages the use of local building stone in new development. Therefore, should the application be approved, officers will explore with the applicant whether limestone could be used in the development. As this is an expensive material, this is likely to be limited. However, officers consider that it might be appropriate to include this material on the caravan facilities building and changing facilities building. The external walls of these buildings are currently proposed to be timber cladding/render and timber cladding respectively. Their external designs are acceptable, but the use of limestone on part or all of the buildings may enhance their appearance.

Apart from materials, detailed landscaping and planting conditions are required. These would be used to agree tree and plant species with the applicant, and can be used to address some of the comments made by the Arboricultural Officer. Overall, the landscape design of the scheme is considered to be acceptable and follows the recommendations of the TDRP.

Whilst the residential development includes natural play equipment within the proposed 'play trails' there is an absence of a traditional playground within the scheme and it is understood that there is a shortage of playgrounds in the area. However, the proposed caravan park includes a play area which has the potential of including traditional play equipment, such as swings, slides etc. Officers would like to explore with the applicant whether this could be made publicly accessible to address the local shortfall and complement the use of the adjoining sports pitch. Should the application be approved this can be explored whilst the s106 agreement is being drafted and secured through planning condition if considered reasonable.

Subject to conditions addressing the matters discussed above, the design and landscaping of the scheme is considered to accord with Local Plan Policies BES, BE1 and BE2.

4. Visual Impact

This issue is closely related to design and landscape quality. The AONB is designated because of its scenic and landscape qualities and, consequently, it is very important for new development to respect this quality. It is an issue that featured strongly in the Inspector's decision on the previous application. As such it has been given very careful consideration in the current proposals.

A Landscape and Visual Impact Assessment has been carried out by specialists on behalf of the applicant. It concludes that the scheme would result in significant long term benefits to the landscape from the restoration of traditional field pattern, provision of new hedgerows and improved public access to the AONB. In terms of impact on views, there would be no adverse visual impacts from long distances and only short term impacts from local viewpoints during the construction phase. However, due to their height, the proposed dwellings would be more visible than the existing chalets on the site in winter before new plantings become established, although this would be compensated for by their better design and materials. Furthermore, the dwellings reduce in height around the rural edge of the housing area and their materials and colouration have been chosen to blend into the landscape setting. In summer, the tree and hedge planting would screen the dwellings in views from Berry Head.

The Archaeology chapter of the Environmental Statement assesses the impact of the development on the settings of the scheduled monuments at Berry Head, including the fortifications. The development would be visible from Berry Head Fort and the Old Redoubt, but new plantings and existing vegetation would filter views of the development. It concludes that the development would not have a significant impact on the scheduled monuments.

English Heritage has provided comments on the application and considers that the development would cause 'less than substantial' harm to the settings of the scheduled monuments, provided the environmental, hedge and tree planting proposals are carefully implemented. The South Devon AONB Manager has raised no objections in terms of visual impact, provided the landscape and habitat proposals are carried out.

Therefore, the proposals are considered to be acceptable in regard to their landscape and visual impact on the AONB.

5. Impact on Amenity of Neighbouring Properties

Two local residents living in the dwellings on Wall Park Road which back onto the site have raised concerns over the impact of the new housing on their privacy from overlooking and also daylight. All the proposed dwellings behind the Wall Park Road dwellings would be 2 storey except for a bungalow behind 71 Wall Park Road. It is generally accepted that a back-to-back distance of 20 metres is acceptable for privacy and other amenity considerations, whilst a back-to-side distance can be shorter than this. All back-to-back distances between the existing and proposed dwellings exceed 20 metres and back-to-side distances are also considered to be acceptable. Therefore, the proposals would not have a detrimental impact on the amenity of neighbouring properties along Wall Park Road and the plans accord with Local Plan Policy H9 in this regard. In addition, study of the plans shows that the separation distances of the proposed dwellings would be within the acceptable limits in order to maintain privacy between the

new properties.

6. Impact on Local Highways and Parking

Despite public concerns over the impact of the development on local highways, particularly Centry Road and Higher Ranscombe Road in terms of the traffic it would generate, highways and transport officers have carefully assessed the proposals. They are of the view that the scheme is acceptable and wouldn't have a detrimental impact on the local highway network. This is subject to securing through the s106 agreement a financial contribution to carry out highway improvements. These are for the provision of signage to direct visitors to the caravan park, improvements to the Rea Barn Road/Higher Ranscombe Road junction and upgrading traffic signals at Burton Street/Rea Barn Road to MOVA. The applicant has agreed to this together with payment of a financial contribution towards the provision and enhancement of sustainable transport modes in the area (see s106/CIL section below).

The movement of the access to the caravan park from Gillard Road to Centry Road followed discussions with Natural England and other environmental bodies. The access on Gillard Road cut through the greater horseshoe bat corridor associated with the South Hams SAC at Berry Head and was unacceptable due to the impact it would cause, particularly from car headlights. Therefore, the access was moved to Centry Road and this was welcomed by Natural England in its response to the revised scheme. This has also helped to improve the scheme as a whole.

Whilst highways and transport officers do not object to the proposed access to the caravan park on Centry Road, they requested an extension of the proposed footpath running along the southern boundary of the site next to Centry Road at its southern end. This is because whilst there is a footway running the majority of the length of Centry Road, there isn't one at its southern end where the road is narrowest. Therefore, officers have negotiated the provision of a footpath extension in order to provide a safe off road route for pedestrians.

In terms of parking provision, all the proposed dwellings would have a minimum of 2 parking spaces except for four of the 2-bed affordable dwellings, which would have one space each. However, there are additional visitors parking spaces near to these dwellings. The overall parking provision for the residential development is considered to be acceptable.

The caravan park would have a car parking area set aside for the camping pods comprising 10 spaces and four more parking spaces nearby. Vehicles towing caravans would park next to the caravan pitches. 21 car parking spaces would be provided in a row along the western site boundary for the sports pitch, with thick vegetative screening opposite to protect the undeveloped area from car headlights. Transport officers have requested a £2,000 bond, returnable after 5

years, to safeguard against the implementation of parking restrictions on surrounding roads in case there is overspill parking from the sports pitch, e.g. if there are matches. This would be secured within the s106 agreement.

Therefore, in light of the above, the proposals are considered to accord with Local Plan Policies TS, T25 and T26.

7. Drainage

A surface water drainage strategy for the development has been submitted, which has been accepted by the Environment Agency. However, the Council's Engineering Service Manager has identified a number of mistakes in the strategy, e.g. trial holes and infiltration tests not carried out in locations of proposed soakaways, and has requested further details. Furthermore, they have recommended a revised strategy incorporating smaller soakaways, due to the presence of underground solution features. The applicant has submitted further details and comments are awaited from Engineering.

Due to the scale of the development the Engineering Service Manager does not support the use of a pre-commencement condition to resolve this issue. Therefore, the recommendation is to allow 3 months after committee for this issue to be resolved with officers otherwise the application will be brought back to committee for further determination.

8. Housing Mix and Affordable Housing

The housing mix comprises 18 no. 2-bed, 84 no. 3-bed and 63 no. 4-bed dwellings. The percentage split is 11%, 51% and 38% respectively. This is considered to be a balanced provision of household sizes. It therefore accords with Local Plan Policies HS and H2.

25 of the dwellings would be affordable housing, which equates to 15%. This level of provision has been accepted by officers and Housing Services following the outcome of an Independent Viability Assessment (IVA). The IVA concluded that it was reasonable to provide 29 affordable dwellings (17.6%); however, neither the applicant's Financial Viability Assessment or the IVA included the costs and values associated with the proposed caravan park. This is because such an exercise would be very difficult and time consuming. The applicant informed officers that the cost to the scheme of delivering the caravan park was estimated at minus £1,000,000. The valuer conducting the IVA had no reason to dispute this and it was therefore accepted by officers. As this amount would equate to roughly 10-12 affordable units which could potentially be lost, the 15% affordable housing offer was considered acceptable by Housing Services and officers.

The tenure of the affordable dwellings is split as a third social rent, a third

affordable rent and a third shared ownership in accordance with the Council's most up-to-date guidance. The size mix is 5 no. 2-beds (20%), 15 no. 3-beds (60%) and 5 no. 4-beds (20%). This shows a slight leaning towards 2 and 3-bed dwellings compared to the scheme as a whole, but has been accepted by Housing Services and would meet the needs of a range of household sizes.

The affordable dwellings would be provided in two clusters of 20 and 5 units to the northwest. The Police Architectural Liaison Officer has suggested the larger of these could be reduced and 'pepper potted' more throughout the residential area. However, Local Plan Policy H9 allows clusters up to 40 dwellings and the distribution has been accepted by Housing Services.

Therefore, the affordable housing provision is considered to accord with Local Plan Policy H6 and the Planning Contributions and Affordable Housing SPD.

9. Community Sports Pitch

Sport England has objected to the application due to the reduction in proposed playing field pitches from two to one and lack of information provided on the specification of the pitch to meet performance quality standards for football and rugby, taking into account the proposed annual use of the pitch as an overflow caravan/camping site during June, July and August. However, Local Plan Policy R3 only requires the provision of one playing field and related changing facilities, so Sport England's objection appears to be partly unfounded. It is also only possible to provide one pitch, due to the requirement to provide the amount of grazing land required by Natural England to mitigate the impact of the development on greater horseshoe bats. Officers have written to Sport England explaining this and are waiting for a response.

Policy R3 was based on a survey of playing pitch provision completed in 1995. The Council published an up-to-date draft Torbay Playing Pitch Strategy in April 2014. This identifies a need for new junior and mini football pitches in Brixham, and also an additional rugby pitch in Brixham, both of which could potentially be provided on the site. Whilst Sport England has stated its concerns with the size of the proposed pitch for adult football and rugby, it could be used for junior football to meet the identified need. It could also be used for junior rugby activity. Therefore, the principle of the proposed community sports pitch is considered to be acceptable. Furthermore, it is considered that Sport England's concerns over the maintenance and management of the pitch can be addressed by planning conditions, e.g. securing a ground conditions assessment and community use agreement. The applicant has stated that the sports pitch would remain in the same ownership as the caravan park, but the conditions would secure its continued community use and require that it is fit for purpose after the summer camping period.

Sport England has also raised concerns with the internal design of the changing

facilities building. Should the application be approved, these issues will be taken up with the applicant to address these concerns prior to the decision being issued.

10. Phasing and Delivery

The phasing and delivery of the different aspects of the development have yet to be agreed. Should the application be approved, these issues would be discussed with the applicant whilst the s106 agreement was being drafted. However, officers would expect the caravan park, sports pitch and ecological mitigation/enhancement measures to be included in an early phase of the project timetable in order to secure their delivery.

Officers would also expect the existing buildings on the site to be demolished and the site to be cleared within a short timescale after permission was granted, subject to Building Regulations approval and any necessary wildlife licenses being obtained. This is due to the social problems that have been occurring.

11. Archaeology

There is a standing stone of possible prehistoric origin within the field proposed as a touring caravan park, which would be retained. Whilst its setting would change, this is not considered to be a significant impact.

The site has potential for archaeology from the iron age, Roman, Napoleonic and WW2 eras. Therefore, archaeological investigations would be carried out prior to any development works taking place in accordance with a Written Scheme of Investigation agreed by the Senior Historic Environment Officer. This would be secured by condition.

12. Contamination

A desk top study and intrusive ground investigation have been carried out by specialists on behalf of the applicant. A number of potential historic sources of contamination have been identified and elevated levels of arsenic have been discovered within natural materials across the site. In addition, single elevations of benzo(a)pyrene and cadmium have been detected. The site is also located within a radon affected area, and slightly elevated concentrations of CO₂ gas have been identified.

Consequently, basic radon protective measures and carbon dioxide protective measures would be necessary, and gardens and soft landscape areas would have to be capped with clean soil to a depth of 600mm and 150mm respectively (deeper around tree plantings). Further ground investigations are required following demolition and site clearance works, e.g. the infill materials of the former swimming pool. The significance of additional impacts would need to be

assessed and any further remediation/mitigation measures identified.

The further ground investigations and remediation measures would need to be secured by planning conditions in accordance with Local Plan Policy EP7. Provided the remedial measures are implemented, the Environmental Statement concludes that the risks would not be significant.

13. Noise

The Noise chapter of the Environmental Statement concludes that there would be no significant noise impacts from the development during its construction, subject to a Construction and Environmental Management Plan (CEMP) to secure measures to control construction noise. This would be secured by condition. In addition, it concludes there would be no significant noise impact to existing and new residents.

S106/CIL -

The following site acceptability contributions are required in accordance with Policy CF6 of the Local Plan and the Planning Contributions and Affordable Housing SPD:

£8,300.00 - Waste Management

£40,000.00 - Highway Improvement Works (as set out in consultation response from Strategic Transportation)

In addition, the following ecological mitigation measures and enhancements would need to be secured in the s106 agreement as site acceptability matters:

- o Landscape and Ecological Management Plan (LEMP) in relation to the undeveloped areas of the site not including the sports pitch/overflow field covering 25 year period with the name of the organisation that will be responsible for implementing the LEMP (£538,745.81 - cost in IVA).
- o Ecological Monitoring and Early Warning Strategy (EMEWS) with the name of the organisation that will be responsible for implementing the EMEWS (£71,163.96 - cost in IVA).
- o Financial contribution (amount tbc) to mitigate the impact of the development on grassland and heaths within Berry Head SAC, with the name of the organisation that will receive this contribution and implement the mitigation identified for this impact in the Habitats Regulations Appropriate Assessment.
- o Delivery of grazing land and cirl buntings cereal crop field at a trigger point to be agreed (£125,424.00 - cost in IVA)
- o Implementation of grazing land setup and stock management (years 1 & 15) (£96,066.00 - cost in IVA)
- o Delivery of bat barn at a trigger point to be agreed (£49,500.00 - cost in IVA)

In addition, a financial contribution of £87,193.00 is required towards the South Devon Link Road (SDLR) in accordance with the adopted Council Report 'Third Party Contributions towards the South Devon Link Road'. (This has been subtracted from the Sustainable Development Contributions below.)

In addition, it has been agreed to provide the following affordable housing in accordance with Policy H6 of the Local Plan and the Planning Contributions and Affordable Housing SPD:

6 no. 3-bed social rent
2 no. 4-bed social rent
5 no. 3-bed affordable rent
3 no. 4-bed affordable rent
5 no. 2-bed shared ownership
4 no. 3-bed shared ownership

Total 25 dwellings (15%)

1 affordable dwelling to be wheelchair accessible

In addition, the following sustainable development contributions are required in accordance with Policy CF6 of the Local Plan and the Planning Contributions and Affordable Housing SPD:

£170,583.50 - Sustainable Transport
£25,386.00 - Lifelong Learning
£14,573.13 - Administration Charge

In addition, the s106 agreement will need to include clauses that secure the following:

- o Extinguishment of lawful uses established by application nos. P/1996/0959/CE and P/2008/1340/CE.
- o Demolition of the existing buildings on the former holiday centre within 2 months of planning permission being granted
- o Early delivery of new hedges and hedge banks
- o Delivery of the touring caravan park at a trigger point to be agreed.
- o Delivery of the community sports pitch at a trigger point to be agreed.
- o Service charge on the dwellings to pay for the upkeep of the landscape in the residential area.
- o £2,000 bond, returnable after 5 years, to safeguard against the implementation of parking restrictions on surrounding roads in case there is overspill parking from the proposed community sports pitch
- o An appropriate deferred contributions mechanism (limited to maximum s106 policy).

Justifications:

The contribution towards waste management is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will pay the cost of providing waste and recycling bins to the proposed dwellings. It also accords with Local Plan Policy W7.

The contribution for highway improvement works is justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and the consultee response from Strategic Transportation. The development will result in more traffic using the local highway network. The contribution will pay for improvements to signing, improvements to the junction at Rea Barn Road/Higher Ranscombe Road and the installation of MOVA traffic signals at Burton Street/Rea Barn Road.

The justifications for the ecological mitigation measures and enhancements are set out in the Appropriate Assessment carried out in accordance with the Habitats Regulations.

The contribution towards the SDLR is justified in Appendix 1 of the 'Third Party Contributions towards the South Devon Link Road' report adopted by the Council on 6 December 2012 and is based on an assessment of the impact that the development would have on the road.

The justification for the provision of affordable housing is set out in section 3 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6).

The contribution towards sustainable transport is justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards carrying out improvements to strategic cycling infrastructure, local walking and cycling links, and a bus shelter on Wall Park Road. The NPPF and Local Plan Policy T2 promote sustainable transport modes. The proposed dwellings and caravan park would generate additional trips and should therefore contribute toward sustainable transport in the area.

The contribution towards lifelong learning is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the cost of improving provision at Brixham Library, including upgrading IT equipment. The proposed dwellings would place additional demand on the services provided by Brixham Library and the contribution will ensure these services are provided with funding to mitigate the proposed development.

The administration charge is justified in paragraphs 5.6-5.8 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and

will be used to administer/monitor the s106 agreement.

Status:

The applicant has agreed to all the obligations above, but is waiting for confirmation of the financial contribution to mitigate the impact of the development on grassland and heaths within the Berry Head SAC, and details of the deferred contributions mechanism. An update will be provided at committee. All timings associated with the payment of contributions and phasing of development works are yet to be agreed and will be negotiated by officers in consultation with the Chairwoman of the Development Management Committee and Executive Lead for Spatial Planning, whilst the s106 agreement is being drafted.

Conclusions

In conclusion, subject to the signing of a s106 agreement securing the matters listed above and the implementation of appropriate conditions addressing the issues raised in this report, the application is considered to be acceptable provided the proposed surface water drainage strategy can be agreed with Engineering Services. Officers have had to balance the views of different consultees and various planning issues, but are satisfied that the revised scheme achieves an overall planning balance and would therefore be a sustainable development. Apart from retaining a high quality tourism use on the site and providing a new community facility in the shape of the sports pitch, the application would deliver significant landscape and biodiversity enhancements to a large area of the AONB that would benefit greater horseshoe bats and other protected species. It would also provide a high quality designed residential development, including 25 new affordable homes.

Condition(s)/Reason(s)

01. Contaminated Land Assessment and Remediation Strategy
02. Programme of Archaeological Works
03. Secure Detailed Ecological Mitigation Measures
04. Construction and Environmental Management Plan (CEMP)
05. Demolition of Existing Roosts and Provision of New Compensation Roosts
06. Bird Breeding Season
07. Arboricultural Method Statement and Tree Protection Plan
08. Landscape Planting Plan
09. Tree Pit Plan
10. Lighting Strategy
11. Materials Schedule (buildings, boundary treatments and hard surfaces)
12. Ground Conditions Assessment (Community Sports Pitch)
13. Community Use Agreement (Community Sports Pitch)
14. Management and Maintenance Strategy (Community Sports Pitch)
15. Management of Surface Water Drainage Strategy
16. Access Plans
17. Travel Plan

18. Parking Provision
19. Cycle and Bin Storage Details
20. Secured By Design Assessment

Relevant Policies

HS - Housing Strategy
H2 - New housing on unidentified sites
H6 - Affordable housing on unidentified sites
H9 - Layout, and design and community aspects
H10 - Housing densities
H11 - Open space requirements for new housing
TUS - Tourism strategy
TU9 - Refurbishment and redevelopment of holiday
TU10 - Change of use or redevelopment of holiday
CFS - Sustainable communities strategy
CF2 - Crime prevention
CF6 - Community infrastructure contributions
RS - Recreation and leisure strategy
R2 - Outdoor recreation developments
R3 - New playing fields
INS - Infrastructure strategy
IN1 - Water, drainage and sewerage infrastructure
W6 - New development and the minimisation of
LS - Landscape strategy
L1 - Areas of Outstanding Natural Beauty
L4 - Countryside Zones
L8 - Protection of hedgerows, woodlands and o
L9 - Planting and retention of trees
L10 - Major development and landscaping
NCS - Nature conservation strategy
NC1 - Protected sites - internationally import
NC2 - Protected sites - nationally important si
NC3 - Protected sites - locally important site
NC5 - Protected species
EPS - Environmental protection strategy
EP1 - Energy efficient design
EP5 - Light pollution
EP6 - Derelict and under-used land
EP7 - Contaminated land
EP8 - Land stability
BES - Built environment strategy
BE1 - Design of new development
BE2 - Landscaping and design
BE10 - Recording of archaeological remains
TS - Land use transportation strategy
T1 - Development accessibility

T2 - Transport hierarchy
T25 - Car parking in new development
T26 - Access from development onto the highway
NPPF - National Planning Policy Framework

Agenda Item 6

Application Number

P/2014/0938

Site Address

Land Off Luscombe Road
Paignton

Case Officer

Mrs Ruth Robinson

Ward

Blatchcombe

Description

Formation of up to 75 dwellings with associated road and landscaping

Executive Summary/Key Outcomes

The site is allocated in the Local Plan for housing and as such, the principle of residential development is acceptable. The Local Plan allocation includes a bank of woodland between the application site and properties on Kings Ash Road which is not included in the current application. The Local Plan indicates this slightly larger site as capable of delivering 65 dwellings; the Strategic Housing Land Availability Assessment (SHLAA) indicates that it can deliver 80 dwellings.

The outline application fixes 'access only' with conceptual plans submitted to show that the site is capable of being developed to a standard consistent with the NPPF and adopted Local Plan policies.

These conceptual plans have been amended since submission. Important trees have been subject to a TPO to ensure their protection and the number of dwellings has been reduced from 75 to a maximum of 68 in order to meet concerns about tree loss, flood risk and amenity.

The revised scheme now reflects the landscape and ecological qualities of the site, shows that the site can be developed without undue impact on the amenity of adjacent occupiers, that flood risk is minimised and that the site can deliver, albeit in a conceptual sense, a well-designed scheme with a strong sense of place although with a more tight knit 'urban' form and character than is otherwise found in this more suburban housing area.

The key issue for residents is the access from the area onto the A380. The main point of access is the Luscombe Road junction which is heavily used and which will be subject to additional traffic movements arising from development of this site.

The Transport Assessment and subsequent surveys established that the junction would continue to operate satisfactorily and that the impact was 'less than severe' which is the test embodied in the NPPF.

Improvements to the operation of the junction will be secured by the development

in the form of easing the left turn by widening the Luscombe Road junction and the possibility of a toucan crossing or similar to assist in traffic seeking to exit this junction and access the A380. The exact form that this will take is subject to some debate and a verbal update will be given at the meeting.

The site is sustainably located and moves to promote non car based means of accessing the site and travel in the local area will be assisted through the use of travel plans and improving cycling and walking links in the area. This will also act to mitigate the impact of additional traffic on the junction.

It is therefore considered that the application to 'fix' access to the site and for residential development in principle should be approved.

Recommendation

Approve: subject to a S106 agreement to deliver the Affordable Housing contribution, the community infrastructure contributions, the surface water mitigation costs, biodiversity offsetting (if appropriate), and the proposed junction improvements and to the conditions itemised below.

Statutory Determination Period

The decision on this application was due on the 16th January. Due to the need to resolve details in relation to the application and to finalise the S106 agreement, an extension of time to the 1st of May has been agreed.

Site Details

This 1.5 hectare site is allocated for housing in the Adopted Local Plan (H1.13) and in the Submission Version Local Plan it is identified for inclusion in the Paignton Neighbourhood Plan. (Policy SDP 3).

It forms part of Great Parks Phase II. It is located to the east of Luscombe Road and to the north of its junction with Queen Elizabeth Drive. Two dwellings originally occupied the north- west corner of the site (one of these has recently been demolished) and the balance of the site is rough pasture but was previously used for camping. It falls within an established residential area.

The site occupies the south east slope of the valley and it slopes quite steeply from north east to south west across the site.

The site is bounded to the west by the Luscombe Road designated cycle route and the boundary is defined by a mature hedgerow of 'important' ecological value. A number of trees occupy the site; those within the main body of the site identified as being of arboricultural value have been recently been subject to a TPO. The boundary trees, previously protected by an Area TPO have been reassessed and those of merit are now also protected by an updated TPO.

The site is, apart from the hedgerow and trees, of limited ecological value

comprising predominantly horse grazed pasture. A number of trees were considered to have potential for bat roosting and there is a 'good' population of slowworms.

The existing vehicular access to the site is from Luscombe Road. This is a designated cycle route and it provides a safe walking route to school to Kings Ash Academy.

It is sustainably located in relation to schools, public transport and local services. The A380, Kings Ash Road is accessed primarily via the junction with Luscombe Road.

The South West Water main runs north to south across the site and requires a substantial 6 metre easement to be retained free of development.

Detailed Proposals

This is an outline application with all matters save access reserved for future consideration. The original submission cited provision of 'up to'75 dwellings. Due to site constraints principally in relation to trees and flooding this has been reduced to a maximum of 68 dwellings.

An indicative layout is provided which shows terraced units running along the northern elevated boundary of the site with shorter runs of terraced properties cutting down across the site. There is provision for 128 car parking spaces.

There is an area of open space retained in the location of the existing dwelling and an infiltration basin for mitigating surface water runoff is located at the lowest point of the site adjacent to the proposed entrance. This is served by bio-retention swales which run along the most southerly edge of the site where surface water accumulates.

A new access is proposed for the site close to the junction of Luscombe Road and Queen Elizabeth Drive. This is formed largely from public highway verge fronting 42 Luscombe Road but does extend partway into the Luscombe Road cycle route.

Accompanying the application is a Design and Access Statement, an Arboricultural Report, a Transport Assessment, a Flood Risk Assessment and an Ecological Impact Assessment.

Summary Of Consultation Responses

Environment Agency: Whilst having no objection in principle to the development of the site for residential purposes the EA did object to the scheme as originally submitted as they did not consider that the risk of surface water flooding had been adequately taken into account. The scheme has been

subsequently amended by the relocation and deletion of units to avoid the high risk areas of the site along the southern boundary. The objection is now lifted.

Drainage: The Council's Engineer is concerned that the existing surface water sewer provided as part of Great Parks Phase I will not be able to deal with any additional flow unless storage capacity is increased at the Clennon Valley watercourse. This will require the applicant to fund expansion of the storage lagoon and increased maintenance through a S106 agreement in the event of the development generating surface water runoff which cannot be mitigated through on site SUDS. This can only be calculated once the drainage strategy for the site is designed. The options are to carry out the design stage now and determine what the costs will be or to require a payment of £255,869 via the S106 which is made up of £152,369 capital costs and annual maintenance costs of £2,940 for 25 years. It may be possible to reduce the scale of costs if on site mitigation proves capable of reducing surface water runoff to the Clennon Valley Watercourse.

South West Water: Raises no objection to the proposal but notes that no development should be permitted within 3.5 metres of the public water main that bisects the site.

Strategic Transport: Have requested additional information regarding junction capacity, more information on a ward basis rather than town wide and clarification re road widths/tracking for refuse vehicles etc. A request for £153,436 sustainable transport contribution is made to improve walking and cycle links in the area.

Highways: Observations awaited

Arboricultural Officer: Objections were raised to the originally submitted scheme due to the loss of trees of merit and the adverse impact on TPO trees. Since that time, TPO's have been served on trees that were at risk and the scheme revised to retain good quality trees. The scheme is now deemed to be acceptable from a tree perspective.

A LEMP is required, to be secured by condition to ensure success of ecological/landscape measures.

The lack of opportunity for street trees and mitigation for the loss of the existing landscape quality of the site remains a matter of concern.

Green Infrastructure Coordinator: Requests that the Green space and recreation contributions derived from the SPD 'Planning Contributions and Affordable Housing' are secured for the Great Parks Community Park rather than being used to provide the requisite level of open space on site. The proposed links to Luscombe Road from the site is welcomed as is the mitigation outlined in

the Ecological Impact Assessment. A LEMP is suggested to secure the implementation of the proposals. In order for retained hedgerows and trees to have ecological value into the future they should not be included within the domestic curtilage.

Clearance and demolition should be conditioned to occur only outside the bird nesting season, lighting details should be secured by condition to mitigate impact on bats and a biodiversity calculation should be done to ensure that a net gain in biodiversity. Off site biodiversity offsetting will be required if this cannot be achieved and secured via the S106. Improving habitats within adjacent Community Park which is part of the Ramshill County Wildlife site is suggested. Architectural Liaison Officer: Suggests increased surveillance of public open space and that relationship of ground floor windows to public footpaths/POS is given greater scrutiny to protect residents from anti social behaviour.

Summary Of Representations

There have been many objections to the scheme. The range of concerns is as follows.

1. Overdevelopment/out of character with surrounding residential area/cramming.
2. Impact on amenity/loss of privacy/overlooking/impact of flats/noise.
3. Loss of greenspace/impact on trees/wildlife.
4. Flooding/septic tanks.
5. Impact on schools/infrastructure.
6. Highway capacity/traffic/impact on junctions to the A380.
7. Access from the site crossing cycle route.

Each will be addressed in turn.

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

The site is allocated for residential development in the Local Plan as part of Great Parks Phase II. It is shown to have an estimated capacity for 65 dwellings although this local plan allocation relates to a slightly larger site area which includes a woodland area between the site and properties on Kings Ash Road. The SHLAA indicates a possible yield of 80 dwellings for the allocated site. This woodland area is not suitable for development due to its landscape quality and difficulties of access.

Guidance about the form that the Great Parks II development should take, the contributions necessary to deliver Affordable Homes and to meet the impact of the development on the wider area in terms of mitigation and infrastructure was

originally included in the Great Parks Paignton: Phase II Planning Brief Supplementary Planning Document. This was later incorporated in the Adopted Torbay Local Plan. This identified that this site should deliver 30% Affordable Housing, that a Phasing Agreement for delivery should be provided, that physical infrastructure was required in the form of water, drainage and sewerage infrastructure and waste management, that community infrastructure contributions should be achieved and it also identified that the site should, in its design deliver a strategic landscape component and mitigation for flood risk.

An overarching Great Parks Development Transport Assessment was also carried out in 2008 to understand the need for additional highway capacity in the locality. This has informed the development of highway works particularly along the A380, the Kings Ash Road.

The Western Corridor Transport Assessment (March 2014) also tested the ability of the Bays infrastructure to accommodate 10,000 new homes and this included the application site. Highway works to improve the functioning of the A380 are currently in the pipeline.

There are two S106 agreements dated 1991 and 1995 that included this site as part of Great Parks II and secured the delivery of necessary infrastructure to enable the Great Parks scheme to proceed.

These are relevant in terms of understanding what contributions the development of this site should meet in terms of past infrastructure delivery and what necessary for it yet to meet.

Key Issues/Material Considerations

The principle of residential development of this site is long established through the allocation in the Local Plan. The key issues relate to the scale and character of development being proposed, its impact on the wider area and the mitigation needed to ensure that its impact on the area is absorbed.

The matters for consideration are:

- A. The character of the scheme.
- B. The impact on the surrounding properties in terms of amenity.
- C. The loss of greenspace, impact on trees and wildlife.
- D. Flooding and drainage.
- E. Impact on Highway network and traffic related concerns.
- F. Impact on schools and Infrastructure.
- G. S106 requirements.

Each will be addressed in turn.

A. The Character of the scheme.

The site is defined as Greenfield, but allocated for residential development in the Adopted Local Plan and is set within a wider residential area. The older

established housing areas to the east and south east of the site are relatively low density, comprising detached and semi detached dwellings set in generally spacious plots. More recent housing development to the north and west, and provided as part of Great Parks Phase 1 are more densely developed and provide smaller dwellings in tighter plots. They do however have a broadly suburban character in terms of the housing layout and the associated highway network.

The conceptual layout for this site in contrast is more urban in character with the use of terraced rather than detached/semi-detached forms producing defined perimeter blocks as a basis for the overall form of development.

This coupled with a more efficient highway layout than generally found in the area produces a more compact, efficient but well designed residential layout with good security and natural surveillance.

The conceptual mix of units is for a mix of 2, 3 and 4 bed houses including some 2 bed apartments.

In order to accommodate levels across the site the terrace blocks running across the higher part of the valley side are 2 stories to the rear with 2 stories and lower level car parking facing over the valley. Five shorter two storey ranges of terraces cut down the slope and terminate close to the hedgerow bordering the Luscombe Road cycle path.

This scale and form of development is less dominant than the 4 storey blocks of flats which occupy the adjacent site.

The initial scheme included a three storey apartment blocks with 10 2 bed units located adjacent to the boundary with 42 Luscombe Road and a smaller two storey block of 4 flats located adjacent to a small public open space to the north of the site. This has since been amended to provide smaller 2 storey apartment blocks which are more in keeping with the pattern of development on site and reduces impact on neighbours.

The overall layout and form responds reasonably well to the topography of the site and is reasonably consistent with more recent development in the area and a move to smaller dwellings. Given its position within the existing urban area it has limited visual impact on the more open rural areas beyond the site to the west.

Two areas of open space are provided on site, one centred around the SWW easement and the second around the location of the attenuation pond located close to the proposed entrance.

The ridge planting will have some strategic significance in terms of distant views and the retention/reinforcement of that is important.

A Building for Life Assessment has been submitted which seeks to demonstrate that the sites characteristics have been fully investigated, that a design response has emerged from a detailed understanding of its qualities and constraints. Whilst these details will only be secured at Reserved Matters stage it does show

the capacity to deliver a good quality scheme.

The submitted conceptual layout has been modified quite significantly during the life of the application.

This has been in response to concerns about the impact on trees, flood risk and on residential amenity. This has involved the deletion and relocation of units along the ridge and adjacent to the hedgerow to ensure the retention of trees and avoidance of the flood risk zone. The proposed public open space has been redesigned to create a more attractive space and to allow retention of trees and development along the boundaries has been scaled down to reduce impact on the amenity of neighbours. These will be addressed in more detail in the relevant section below. However, the basic conceptual approach, reached after extensive design investigation of the site and its qualities remains broadly unchanged.

It is considered that the conceptual form and layout of the scheme, whilst more urban in form and character, makes effective use of urban land and responds well to the topography of the site. It has the potential to create a good quality, well designed scheme that will provide a sense of place and a satisfactory residential environment for future residents although the detail of this will need to be secured at Reserved Matters stage. As such it accords with policies H9 and H10 of the saved Adopted Local Plan 1997-2011.

B. Impact on Amenity

Concerns have emerged from consultation about potential impact on amenity particularly from residents on Kings Ash Road and Luscombe Road. Whilst this is an outline application and matters such as siting and design of individual units will be resolved at the reserved matters stage it is particularly important to identify potential conflicts at this early stage in the process.

The proposed 10 unit apartment block adjacent to 42 Luscombe Road was located close to the boundary and there was limited information to understand level changes and potential for overlooking across the boundaries. In response, the block has been reduced from 10 to 6 units and relocated away from the boundary. This alleviates conflict and allows opportunity for landscaping to be introduced which will help mitigate concerns about privacy.

Other issues in relation to amenity largely relate to the impact of construction which cannot in itself form a reason to resist development. It is appropriate however to ask for a Construction Management Plan to ensure that the site is managed in a professional manner which will reduce nuisance to local residents. Thus it is shown that the site can be developed without undue impact on amenity in compliance with policies H9 and H10 of the saved Adopted Local plan 1990-2011.

C. Loss of Greenspace, Impact on Trees and Wildlife

This is an allocated site and so the principle of residential development is established. It is important however that the value of the site from an ecological and landscape perspective is fully understood and appropriate mitigation achieved.

The development of the site for housing purposes is inevitably going to lead to a reduction in the green, open character of the site. Greenspace is of value for both visual and ecological reasons.

In terms of the visual qualities of the site, negotiations have succeeded in ensuring the retention of many trees that were to be felled and following a detailed assessment of their health, TPO's have been served to ensure that significant trees are protected. These relate to the trees along the boundary with properties along Kings Ash Road, the existing attractive trees centred around the existing dwellings on the site (except the Monkey Puzzle which has only a limited life) and 2 trees along Luscombe Road which were either to be felled or suffer root damage under the original submission.

In terms of the ecological value of the site, an Ecological Impact Assessment has been submitted following a Phase 1 Habitat Survey. This identifies broad mitigation and enhancement proposals pre and post construction and seeks to ensure that the most important ecological features of the site are protected and indeed improved.

A key ecological feature is the hedgerow along Luscombe Road. This is species rich and merits definition as 'important'. Whilst some 21m of this hedge is lost due to the need to create a new access, its loss is mitigated by new hedgerow planting and the creation of new habitats within the site. It will also be properly managed in the long term to ensure its longevity and to provide a more effective wildlife corridor. The long term management of retained trees is also now secured to the benefit of wildlife.

A LEMP (Landscape and Ecology Management Plan) to ensure proper management of key landscape and ecology features which will be beneficial to the area is recommended by their consultant endorsed by the Councils Green Infrastructure Officer and will be secured by condition.

Further, in order to mitigate the loss of open space, the green space contribution derived from the S106 contributions will be used towards the establishment of the proposed Country Park.

Any reduction in biodiversity on site should be compensated for by improvements to the habitats in the proposed Country Park which includes the Ramshill County Wildlife Site. This requires a calculation to be carried out by the

applicant's consultant using the DEFRA biodiversity offsetting matrix to determine whether there is a net gain or not for biodiversity.

Thus it is shown that the site can be developed in compliance with policies LS, L10, L8/9, NCS, and NC5 of the saved Adopted Local Plan 1995-2011.

D. Flooding and Surface Water Drainage

The Councils Strategic Flood Risk Assessment shows the site lies in Flood Zone 1. It lies within the catchment of the Clennon Valley Watercourse which has experienced flooding downstream of this site. The scheme includes on site mitigation for surface water disposal in the form of an attenuation pond and a bio retention strip adjacent to the valley bottom where there have been incidents of surface water flooding.

The EA initially raised an objection to the proposed layout due to the location of dwellings close to the valley bottom and within the surface water flowpath. This objection was lifted when the units were relocated higher up the valley side.

The Councils Drainage Engineer has concerns about the scale of surface water discharge from the site if developed. It is not known, until full infiltration tests are carried out and the drainage scheme fully designed whether the onsite SUDS scheme is fully able to absorb excess run off. Any excess run off will have to be discharged into the Clennon Valley Watercourse via surface water sewers. This would require increased capacity at the Clennon Valley attenuation pond which the applicant would be required to fund. Currently, the applicant is reluctant to fund this detailed design work. However, for the purposes of the S106, and in the absence of firm data, it is important to include a figure that is a cautious estimate of what these works may cost. The Drainage Engineer suggests a figure of £255,890 (index-linked) which includes £ 152,369 capital works and annual maintenance costs of £ 2940 for 25 years. This may be reduced if calculations show that surface water can be more fully mitigated by on site SUDS systems.

Thus it is shown that the site can be developed in compliance with flood risk policies included in the NPPF.

E. Impact on Highway Network and Traffic Related Concerns

As previously highlighted, this is an allocated site with an identified capacity of 65 units. The development of new housing comprised within Great Parks Phase 1 and 2 has been informed by an overarching Transport Assessments designed to guide future works to achieve improved access to development sites and ease the free running of traffic along Kings Ash Road as these sites came on stream. The contribution that this site would make (once occupied) to local traffic movement has formed part of this broad assessment.

This small enclave of post war housing comprising Luscombe Road, Luscombe Crescent, Queen Elizabeth Drive, Highfield Crescent, Great Parks Road acts in highway terms like a large cul de sac with only limited access onto the principle through route, the A380. This is a busy road which is characterised by slow

moving nose to tail traffic during peak hours with much faster traffic outside peak times. Both sets of traffic conditions presents difficulties for traffic seeking to access the A380. There are three points of access into the wider highway network, Luscombe Road (the most heavily used junction) Highfield Crescent, which accesses the A380 immediately to the south of Luscombe Road and Great Parks Road which is further south again.

Increased traffic is the area of most concern to local residents particularly the operation of the junctions from this neighbourhood onto the A380, the Kings Ash Road. In order to understand the impact of the additional traffic moment in the area generated by development of this site a TA has been submitted which has been assessed by the Councils Strategic Transport Officer.

The TA assesses the accessibility of the site, the existing traffic conditions, involves detailed surveys particularly at congested junctions. It examines what difference this scheme will have on the local highway network and identifies what mitigation is achievable. It also looks at ways of improving more sustainable means of moving about the local area.

In the initial TA, traffic counts were carried out at the Luscombe Road/ Kings Ash Junction which identified that average waiting times at this junction during peak times was seven seconds and that the development was likely to introduce an additional 2 way average of 1 vehicle movement a minute during peak times. It was assumed that all development traffic would use this junction to exit onto the A380.

The Councils Strategic Transport Officer considered that, given the additional strain on this already difficult junction further assessment of the Luscombe Road junction onto the A380 through a PICARDY analysis should be undertaken along with a more detailed analysis of traffic movements in this particular neighbourhood.

This aimed to achieve a better understanding of likely trip generation, how it dispersed itself across the points of access and possible queuing times if this development went ahead.

What this more site specific assessment showed was that not all the existing traffic seeking to access the A380 from this neighbourhood uses the Luscombe Road/Kings Ash Junction. About 35% of traffic avoided the Luscombe Road junction, particularly if wishing to travel south, by using the Great Parks Road junction. This, along with the reduction in dwelling numbers, meant that the identified impact of the development on the most heavily used junction, Luscombe Road was not as significant as originally anticipated in the TA.

Whilst the slow moving traffic along Kings Ash Road is clearly identified as a key matter which inhibits access from the residential area surrounding the application site onto the wider network. The conclusion of the TA was, in summary, that

there was no unacceptable queuing arising as waiting traffic was often waved through and that the addition of 68 units should not 'have a detrimental impact on the operation of the road network'.

What did emerge however is that vehicles wanting to travel north on the A380 from the Luscombe Road junction could get held up during peak times if traffic was queuing to turn right. This arose due to the restricted width of the junction. A solution to this is to increase the exit width and thus improve ease of movement if travelling north. It is considered that this would improve the functioning of this junction and assist traffic seeking to travel north and should be secured as part of this development.

It also emerged that the nose to tail traffic along the A380 often facilitated access through the junction as waiting cars are often 'waved through'.

The current works to improve the through flow of traffic on the A380 as part of the Western Corridor Relief Works may however make it more difficult to emerge into traffic flows that are more free flowing and speedier.

A solution to this is the possible inclusion of a toucan crossing at the point of the existing traffic refuge south of Luscombe Road. This would assist pedestrian and cyclists (enhancing the options for more sustainable movement and theoretically cutting car journeys) and the inclusion of Keep Clear markings southbound across Luscombe Road would also provide an opportunity for vehicles to exit when the toucan crossing is in operation. This could be funded by the Sustainable Transport Contribution which would be derived from the scheme. Further assessment of this option is required in the context of the ongoing Western Corridor Relief Works and a verbal update will be provided at the DMC meeting.

Thus the TA identifies that the impact of the additional traffic movement particularly on the Luscombe Road junction is not considered to be severe. On that basis, in line with the test in the NPPF, the application does not warrant refusal of planning permission. The scheme also identifies a positive enhancement to the operation of the junction which could be funded by the S106 money derived from the scheme. The NPPF also advises that reducing the use of the private car by improvements in sustainable transport such as cycling and walking and through the implementation of a Residential Travel Plan should be sought to mitigate the impact of new development on the highway network. The site is adjacent to a designated footpath/ cycle route and the design includes good connectivity to this important facility. This will be upgraded as part of this scheme thus increasing the opportunities for more sustainable movement.

Requests have been made by residents of Luscombe Road to consider other options for accessing the site either by forming an access from Trelissick Road/Montesson Road (immediately to the north of the application site) or from the point where the Luscombe Road cycle route crosses Trelissick Road.

The former option is impractical due to changes in levels between the two sites and intervening land ownerships. Of these two routes, which terminate close to the northernmost boundary of the site, one would involve land take across a car parking court which serves the adjacent flats and the other a private garden and parking bay. In addition to the costs of purchasing these two strips of land a ransom of around £400,000 would be payable to the developer of Great Parks Phase 1 to meet the costs of the highway infrastructure delivered as part of that development. This would further affect the deliverability of the application site.

The applicants have, in addition to providing detailed levels, pointed out the more tortuous route to the main A380 from this point in contrast to the more direct route to the A380 junctions proposed as part of this application.

The suggestion of using the northern part of the Luscombe Road cycle path as an alternative access presents difficulties due to it being a designated cycle route. It would require widening over a significant length and require significant works to bring it up to an adoptable standard for servicing the new development.

The transport implications of both options in terms of the capacity of feeder streets and the main junction into the area are to be given some consideration by the applicants Transport Consultant.

It is likely that serious objection would be generated to any such proposal by people living in the adjacent area. A verbal update on this will be given at the meeting.

It must be borne in mind that the application for consideration is an outline application to fix access at the point shown on the submitted plans. This can only be refused planning permission if the impact on the highway network is shown to be 'severe' through assessment of a TA which is demonstrably not the case.

This application could not be refused, if it is shown that the highway network will continue to operate satisfactorily, simply because there is an alternative option.

It has also been suggested that the road traffic order operating at the junction of Lutyens Drive and Queen Elizabeth Drive, which allows access only for emergency vehicles should be amended to allow traffic from the Luscombe Road area to gain access to the A380 via the signalised junction of Cotehele Drive with the A380.

This however cannot be achieved via this planning application as it is not within the control of the applicant to deliver and it would require the road traffic order to be varied which would be subject to public consultation. It is also likely that this would attract objection from residents of the affected streets.

Other concerns relate to the proposed access to the site which crosses over public highway land and appears to coincide with the footpath/cycle route along Luscombe Road. The tentative design has been looked at and is capable of being designed to ensure full highway safety. Its relationship with the main road also requires careful design. It must be recognised that the existing housing on the site is directly accessed from Luscombe Road and as part of this scheme this potentially more unsafe means of access will be deleted and the hedgerow reinstated. This is a matter however that can be looked at in more detail at the Reserved Matters stage.

Thus it shown that the highway impacts of the site are acceptable when judged against the criteria in the NPPF and otherwise the scheme is in compliance with policies TS, T1, T3, T25 and T26.

F. Impact on Schools and other Infrastructure including Septic Tanks.

There are both primary and secondary schools located in easy walking distance. It is not considered that this application will have any appreciable impact on either school. Kings Ash Academy is within 800m of the site and has capacity at the moment. Pressures may start to emerge in 2018 but it is proposed to open a new school closer to Paignton Town Centre which will enable school catchments to be reconfigured and maintain capacity at this school.

A particular concern from residents on Kings Ash road is the impact of the development on their septic tanks and the drainage field that each requires. Properties on Kings Ash Road that back onto the site are all serviced by septic tanks located to the rear of the gardens close to the boundary of the site. The applicant, whose family has owned the site for many years, is unaware of any easements granted for occupiers of these properties to use his land for soakaways.

'Prescriptive easements' may be achieved by affected residents if they can demonstrate use of the land in question without challenge for more than 20 years.

In the absence of any easement then the use of the land for such purposes would be subject to challenge by the landowner. This is essentially a civil matter to be resolved between the respective landowners. If the Kings Ash Road properties have a legal right to use the land for soakaways, then the landowner, if he wished to carry out the development, would have to pay for the mains connection to be carried out along with an agreed maintenance charge.

As with a restrictive covenant, the landowner's legal responsibilities would not be overridden by the grant of planning permission. Further advice is being sought regarding the likely extent of soakaways and progress will be reported verbally. Nonetheless, the new dwellings are more than 15m from the boundary of the site with the Kings Ash Road dwellings which would be compliant with Building Regulations regarding the distance required between residential properties and

septic tank soakaways.

G. S106 Requirements.

The requirements in relation to the S106 are as follows:

Policy H5 Affordable Housing on identified sites requires the provision of 30% Affordable Housing. This site has been subject to an IVA which has confirmed that with the original 75 units, the scheme could deliver 17 AH units on site which comprises 22.7% of the total. The reduction in numbers of units will clearly affect the viability of the site and the offer has been reduced to 20%. This is likely to prove acceptable subject to deferred contributions being agreed and progress will be reported verbally.

In addition to meeting the AH contribution the scheme should meet the Community Infrastructure Contributions as required by the Adopted SPD 'Planning Contributions and Affordable Housing'

This is worked out on the basis of floor space and at the outline stage this is difficult to finalise. A schedule of floor space and associated costs can be prepared for inclusion in the S106. In order to provide some guidance as to the likely scale of costs the table below is calculated simply on the basis of bedroom numbers comprised within the current conceptual scheme. This also assumes all market housing and does not include any discount in respect of the Affordable Homes included within the scheme.

Waste Management (Site Acceptability)	£ 3,400.00	£ 3,230.00
Sustainable Transport (Sustainable Development)	£150,980.00	£129,576.83
Stronger Communities (Sustainable Development)	£ 10,600.00	£ 0.00
Lifelong Learning (Sustainable Development)	£ 19,360.00	£ 4,537.83
Greenspace & Recreation (Sustainable Development)	£114,060.00	£ 94,502.83
Total	£298,400.00	£283,480.00
Administration charge (5%)	£ 14,920.00	£ 14,174.00
Total with Admin Charge	£313,320.00	£297,654.00

The greenspace contribution will be used to help fund the Country Park and the Sustainable Transport Contribution to fund the Toucan crossing and improvements to the cycle path etc.

In addition to this, there is a need to either carry out the detailed drainage design to establish the costs of dealing with residual surface water runoff or to pay the contribution highlighted in the report. This can then be reduced if it is shown that surface water can be absorbed on site.

A DEFRA offsetting calculation is required to be carried out to establish whether there is any net impact on Biodiversity which should be mitigated by works to improve habitats in the Ramshill CWS.

The works to improve left hand traffic flows at the Luscombe Road/Kings Ash Road junction can be secured by a Grampian condition. The costs of these works are unclear at the moment.

Conclusions

The site is allocated in the Local Plan for housing and as such, the principle of residential development is not for consideration. The outline application fixes access only with conceptual plans submitted to show that the site is capable of being developed to a standard consistent with the NPPF and adopted Local Plan policies.

These conceptual plans have been amended by reduction and relocation of dwellings to ensure that the landscape and ecological qualities of the site are taken account of in the overall scheme, that the amenities of existing and future residents can be accommodated and that floodrisk is minimised. It also demonstrates, albeit in a conceptual sense, that a well-designed scheme with a more urban form and character can be successfully developed on the site.

The key issue for residents is the access from the area onto the A380. The main point of access is the Luscombe Road junction which is heavily used and which will be subject to additional traffic movements. The TA and subsequent surveys established that the junction would operate satisfactorily and that the impact was less than severe which the test is embodied in the NPPF. Improvements to the operation of the junction will be secured by the development in the form of easing the left turn by widening the junction and the possibility of a toucan crossing or similar to assist in traffic seeking to access the A380.

Recommendation.

Approve: subject to a S106 agreement to deliver the AH contribution, the community infrastructure contributions, the surface water mitigation costs, biodiversity offsetting (if appropriate) and the proposed junction improvements and to the conditions itemised below.

1. Submission of Reserved Matters. Appearance, Landscaping, Layout and Scale.
2. Existing and proposed levels across the site including details of all retaining structures.
3. Arboricultural Implications Study including tree protection measures.
4. Requirement to enter s278 Notice to secure junction improvements prior to occupation.
5. Drainage design and means of dealing with surface water disposal/ detail in relation to bio-retention swales/attenuation pond.

6. Submission/Implementation of LEMP.
7. Lighting strategy to include bat friendly lighting.
8. Re assessment of trees prior to any works to assess bat roosting.
9. No ground/clearance works in bird nesting season.
10. Detail of proposed access to the site including measures to ensure highway safety.
11. No works to take place prior to reptilian relocation strategy being approved.
12. Residential Travel Plan.
13. Submission/implementation of CEMP.
14. Landscape implementation

Relevant Policies

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Agenda Item 7

Application Number

P/2014/0947

Site Address

Land Off Brixham Road -Long Road
Former Nortel Site
Paignton

Case Officer

Matt Diamond

Ward

Goodrington With Roselands

Description

Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping.

Executive Summary/Key Outcomes

The application is to redevelop the former Nortel/Bookham site adjacent to Long Road and Brixham Road on the edge of Paignton for a mix of housing, business and retail uses. The application is submitted in outline with all matters reserved except access. The site is currently vacant and largely derelict. It is a brownfield site. The site is allocated for mixed use development in the Submission Local Plan.

An indicative masterplan has been submitted showing that the residential dwellings would be provided to the north and west of the site, with the business and retail uses to the south adjacent to Long Road. The residential development would be accessed via the existing access on Brixham Road. This is acceptable to Highways, subject to S278 funding to provide a right turn waiting lane for vehicles exiting the site and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction. Access to the retail park would be provided off the Long Road/Waddeton Road roundabout and two access points for service/delivery vehicles would be provided further along Long Road for the business and retail uses. Despite concerns raised by South Devon College and the promoters of the White Rock development, Strategic Transport and Highways officers consider that the local highway network has sufficient capacity to accommodate the traffic generated by the development. Therefore, the access proposals are acceptable.

The principle of providing housing and business uses on the site is acceptable and considered to be consistent with the NPPF and emerging policy. However, the proposed retail uses would have an adverse impact on Paignton and Torquay town centres, which could be considered to be significantly adverse due to the poor health of these centres and their vulnerability to relatively small levels of impact. However, the retail uses are necessary to the viability of the scheme as a whole and therefore

the ability to redevelop this brownfield site at the current time. Therefore, officers consider that overall, the retail use of part of the site is acceptable, subject to the imposition of restrictive use conditions, despite the impact on the town centres. The conditions will have to ensure that the retail units are truly 'bulky goods' stores. However, Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

The applicant has offered £1.2m towards the provision of on-site affordable housing and contributions, which will effectively deliver the site acceptability contributions and 3.9% affordable housing (10 dwellings), but no sustainable development contributions. The reason for this is the viability of redeveloping this brownfield site. Officers are still negotiating with the applicant in this respect and are not currently satisfied with the robustness of evidence provided for the high external and abnormal costs. Officers' recommendation for approval is only on the basis of the applicant agreeing to a full open book deferred contributions overage mechanism, or alternative, to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout its construction.

Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the deferred contributions mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Again Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

Recommendation

Conditional approval; subject to the applicant providing satisfactory further evidence to demonstrate that the External and Abnormal Costs are robust, and the applicant agreeing in writing to a full open book deferred contributions overage mechanism, or alternative, which is acceptable to the Director of Place to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout the construction phases, or the application be refused prior to the agreed extended time period; and subject to the signing of a s106 legal agreement in terms acceptable to the Director of Place prior to the agreed extended time period, or the application be refused, and no later than 3 months from the date of this committee or the application be reconsidered in full by the committee; final drafting and determination of appropriate planning conditions delegated to the Director of Place, including restrictive 'bulky goods' retail conditions that are satisfactory to the Director of Place in consultation with the Chairman and ward Councillors.

Statutory Determination Period

The application was validated on 10.10.2014. An extension of time to determine the application has been agreed to 27.03.2015.

Site Details

The site comprises the former Nortel/Bookham site known as Devonshire Park to the west of Brixham Road on the outskirts of Paignton. The site area is 9.76ha. The site is a former industrial site that primarily manufactured electronics and closed in 2006. Following demolition of most of the buildings in recent years, the site is largely derelict. It is a brownfield site.

The site is bounded by housing, sports pitches and Western Business Park to the north, Brixham Road (undergoing improvement works) to the east, Long Road to the south and South Devon College to the west. The College owns an industrial building immediately adjoining the site to the west currently occupied and leased to STL, formerly Syntech Technologies. However, the College plans to expand its educational activities onto this site in the future.

The wider area is characterised by new housing development with associated employment and retail under construction to the north (Yannons Farm/Parkbay); suburban housing and Clennon Valley to the east; the Long Road industrial estate and a mixed use housing led development (White Rock) under construction to the south; and open countryside beyond the College and other industrial buildings to the west.

The site is unallocated in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan'), with the exception of part of the north and north eastern corner designated a wildlife corridor. The site forms part of a Future Growth Area to the west of Brixham Road in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'), aimed at delivering sustainable, mixed use development primarily focused on the delivery of housing and employment uses.

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. The topography of the site rises by about 20 metres from south to north. It is within Flood Zone 1 and a Critical Drainage Area. Parts of the site particularly to the north have become overgrown. There are scattered lines of trees on and around the boundaries of the site. Parts of the site are likely to be contaminated from the historic uses. The parts with most risk are to the south and particularly to the west, with lower risk to the north.

Detailed Proposals

The application has been submitted in outline with all matters reserved except access. The description of development is for a mixed use development comprising up to 255 residential dwellings, up to 5,574 sq m of B1 and/or B8 business and/or warehousing uses, up to 8,501 sq m of A1 'bulky goods' retail uses (including up to 515 sq m garden centre), and up to 139 sq m A3 cafe/restaurant uses, with all

necessary supporting infrastructure, parking, open space and landscape and following demolition of the remaining buildings.

An indicative masterplan has been submitted with the application. This shows the business/warehousing and retail uses sited on the southern part of the site adjacent to Long Road, with the retail uses on the corner of Brixham Road and Long Road. The northern and western parts of the site are shown as being redeveloped for housing.

The only detailed matter at this stage is access. The residential development would be accessed via the existing access on Brixham Road. This is currently used by students of South Devon College as a shortcut to avoid the Brixham Road/Long Road traffic light junction. However, the indicative masterplan shows the existing through route to the car parks behind the College will be closed to vehicles. Three new access points would be created off Long Road, one providing public access to the retail car park off the Long Road/Waddeton Road roundabout and the other two being access points for service/delivery vehicles for the retail and employment uses.

Summary Of Consultation Responses

Natural England: Welcome proposals to provide mitigation for impacts on greater horseshoe bats and integrating with mitigation on neighbouring developments. However, there is little detail as the application is in outline. It is understood this will be developed as part of the reserved matters. Refer to Standing Advice with regard to impacts on other protected species. Biodiversity enhancement measures are encouraged. Green infrastructure, including multi-functional green infrastructure, should be incorporated. Local impacts should be assessed.

Environment Agency: No objections re flood risk - support soakaways in principle. However, contamination issues have not been reviewed in relation to risks to controlled waters. An update on the groundwater quality at the site is required. Any development proposal will need to incorporate appropriate consideration of risks to controlled waters. Only after this has been carried out can a detailed surface water drainage strategy be prepared. Failure to do so could lead to mobilisation of contamination. Conditions to protect controlled waters are recommended accordingly.

Sport England: No comment.

RSPB: Disappointed no mention of birds in mitigation section of Ecology and Landscape Report. Encourage nesting/roosting boxes at one box per dwelling. Nest bricks are recommended. The non-residential buildings could be considered for similar treatment and green walls and living roofs would add an interesting dimension if feasible. A Landscape and Ecological Management Plan (LEMP) should be conditioned.

South West Water: Unlikely the public foul drainage network would have capacity to accommodate this development. Therefore, a pre-commencement condition is

required to identify the necessary infrastructure improvements and implement them prior to occupation of the dwellings.

South Devon AONB Manager: No response.

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: Secured By Design (SBD) principles should be considered for reserved matters. Crime, disorder, antisocial behaviour and conflict are less likely to occur if attributes of Crime Prevention through Environmental Design (CPtED) are also incorporated.

South Hams District Council: No response.

Torbay Coast and Countryside Trust (TCCT): No response.

Torbay Design Review Panel (comments provided at pre-application enquiry stage): The approach to the site should adopt exemplar urban design and landscape principles, which should inform the framework for any masterplan prior to defining land uses and individual buildings. The residential and employment use have potential benefit of linking well with surrounding developments. The retail park appears to be at odds with principles of urban design, possibly the wider strategy of the area, and the quality of its execution is key to the viability of the remaining parts of the site. In terms of the economic viability further exploration of the business case for the development as a whole is urged in order to improve the viability of the proposed residential development in the interests of delivering the best possible scheme. There is potential to create an exciting and dynamic mixed use neighbourhood with strong vitality and positive interactions between commerce, retail, dwelling and education. Encourage the developer to seize the full potential of the site and avoid standard approaches for the form of development.

Housing Services: Comments awaited.

Strategic Transportation: Initial comments identified requirement for further work in the Transport Assessment. Support proposals for Travel Plan Welcome Packs. Further comments confirmed that the access arrangements are acceptable, subject to necessary S278 highway works (later confirmed to be a right turn waiting lane for vehicles exiting the site from the residential access and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction). A sustainable transport contribution is also required to enhance cycle and bus infrastructure in the area. This is to mitigate for the additional traffic generated by the proposal.

Community Safety: The information provided on contamination is limited and there are a number of data gaps. Some of the historical data is old and may need to be updated. However, there is sufficient information to indicate that the contamination can be dealt with and the land remediated to an acceptable standard for the end use. Unable to comment on the costing for the remediation for the land, as not enough

information has been provided. The full contaminated land condition should be attached to any planning permission.

Engineering - Drainage: The proposed drainage strategy is acceptable. However, further site investigation is required to inform the detailed design of the soakaways and drainage systems discharging to the soakaways. This should take into account the risk of solution features on the site. Once the final soakaway locations and invert levels have been decided infiltration testing must be carried out in accordance with BRE 364 at the location and invert level of the soakaway to identify the infiltration rates to be used in the detailed design. This must be carried out for the critical 1 in 100 year storm event plus 30% for climate change. This also applies to the drainage system discharging to the soakaways, which must be designed in order that no flooding to properties is predicted. The above information can be secured by pre-commencement condition.

Arboricultural Officer: A tree survey is required. Detailed landscape proposals must accord with adjacent schemes. The layout and density are considered incompatible with the requirement for additional street tree planting, therefore unable to recommend approval on arboricultural merit until the points have been addressed; however, the central green space and retention of strong bounding tree groups is welcomed.

Natural Environment Services: The proposed green infrastructure provision is limited for a development of this size - a larger central public open space is recommended, which should be overlooked by housing to provide natural surveillance. On-site public open space is preferred to an off-site contribution; NES happy to manage this, subject to suitable commuted sum payment. Green walls and roofs on the commercial buildings would be welcomed to soften visual impact, and provide rainwater attenuation and habitat opportunities. Support ecology recommendations set out in the Ecology and Landscape Report. Full details need to be provided in a LEMP, secured by condition. Some information is missing from the report and should be provided prior to determination. There are some inaccuracies with regard to reptiles. Boundary features requiring ongoing management, such as hedgerows and trees, should not be located within residential gardens. A condition is required to restrict demolition and vegetation clearance to outside the bird breeding season.

Building Control: Comments awaited.

Summary Of Representations

Eight public representations were received, six objections, one neutral and one in support of the proposals. Objectors include South Devon College and the promoters of the White Rock development.

South Devon College is not against the proposals in principle, but have concerns with the increased traffic on local roads and lack of capacity to allow further College development in the future, as well as safety concerns over more commercial traffic

using Long Road. The College has also pointed to the lack of information provided on the phasing of the development and importance of delivering the employment and retail uses before the residential development. The College also has concerns with the potential movement of contaminated soils on the site and risks to College buildings and nearby housing. It has also pointed out the requirement for contributions to improve sustainable transport provision in the area and improve pedestrian safety along Long Road, as well as the need for an education contribution and contribution to enhance sports and open space facilities, some of which could be used to enhance the College's existing facilities.

The promoters of the White Rock development, Deeley Freed Estates and Abacus Project Ltd, have also objected on highways grounds. They have pointed to a lack of detailed information in the Transport Assessment and therefore question its accuracy and validity. They have concerns with the proposed access to the retail car park from the Long Road/Waddeton Road roundabout and the effect this will have on the White Rock development and junctions on Brixham Road. Again they point to a lack of information in the application to show how this new access will work without having an adverse impact on access to White Rock.

The following material considerations were also raised:

Object

- o Question need for more housing in this location
- o Impact of more housing on local infrastructure, including schools and highways
- o Traffic impact from additional shoppers and residents
- o Cumulative traffic impact needs to be considered
- o Economic Impact Assessment required
- o Lack of recreation and community facility provision
- o Safety concerns with service/delivery vehicle access points on Long Road
- o Concerns over height of proposed buildings on amenity of existing housing
- o Visual impact
- o More waste

Neutral

- o Supports garden centre and business development
- o Questions need for more housing
- o Affordability of homes to local people

Support

- o Site as existing is an eyesore
- o DIY store welcomed
- o Extra housing, provided plenty of affordable housing, not ideal but needed
- o Traffic impact concerns

Relevant Planning History

DE/2014/0115: Re-development for a residential led mixed use scheme: File Closed 04.11.2014

ZP/2012/0203: Masterplan advice: File Closed 06.10.2014

P/2011/0769/DM: Demolition of buildings: Approved 12.08.2011

ZP/2008/0579: Change of Use: Split Decision 30.06.2008

ZP/2006/1014: Re - Development: File Closed 05.12.2006

ZP/2005/0707: Development Of The Site: Split Decision 29.08.2005

Numerous minor apps with electronic records going back to 1995.

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Development
2. Indicative Layout
3. Access and Impact on Local Highways
4. Visual Impact
5. Contamination and Proposed Remediation Strategy
6. Drainage
7. Ecology and Landscape
8. Noise
9. Viability and Costs Evidence
10. Phasing and Delivery

1. The Principle of the Development

The relevant Local Plan Policies concerning the principle of development in land use terms are considered to be HS, H2, ES, E5, E6, SS, S6 and EP6. The policies in the NPPF are material considerations with significant weight. Policy SS2 of the emerging Local Plan allocating the site as within a Future Growth Area is a material consideration, but with limited weight at present due to objections to it which have been received. The same applies to emerging policies SS4, SS5, SS11, TC3 and H1.

The principle of redeveloping the site for housing and business uses is considered to be acceptable and in accordance with Policies HS, H2, ES and E5. Policy E6 permits the change of use or redevelopment of existing employment land to non B class uses where the proposed alternative use would achieve a more sustainable balance of uses in the Local Plan area, or the existing use is a cause of significant harm or nuisance to the amenity of the surrounding area and the environmental benefits of its replacement by an alternative use would outweigh the loss of employment

opportunity. A mix of housing and business uses is considered to be a sustainable balance for the site. The principle of accepting housing as part of mixed use developments on employment sites has already been established in the area (e.g. White Rock and Yannons Farm/Parkbay) and accords with emerging policy, as well as paragraph 22 of the NPPF which encourages other uses where there is no reasonable prospect of employment sites being reused for employment. In addition, the site is derelict and an eyesore, and its redevelopment will have an environmental benefit on the amenity of the area. Policy EP6 lends further weight to this argument.

However, the proposed retail use conflicts with the principle behind Policies SS, S6, paragraphs 23 and 24 of the NPPF, and emerging Policy TC3, which seek to protect the vitality and viability of town centres. The site is in an out of centre location. The applicant has submitted a Retail Statement accordingly which assesses the retail element of the proposal with regards to the sequential and impact tests. The Council's retail consultant has reviewed the report and subsequent information, and advised that the proposed retail use could have a significant adverse impact on Paignton and Torquay town centres. This is exacerbated by the poor health of the centres at the present time and their vulnerability to relatively small levels of impact. In accordance with the NPPF and national planning practice guidance, applications likely to have a significant adverse impact on town centres should be refused, whilst those which will have an adverse impact should be determined weighing up the positive and negative effects of the proposal and all other material considerations. The retail consultant has stopped short of stating the proposal will have a significant adverse impact and advised that the Council must come to its own view on this matter.

Whilst there is some uncertainty over whether the adverse impact on Paignton and Torquay town centres will be significant or not, officers consider that the Council should err on the side of caution and refuse the development, due to the poor health of these centres at the present time and their vulnerability to relatively small levels of impact, unless there are material considerations which indicate otherwise and these have significant weight in the overall planning balance to offset the harm to the town centres. Officers asked the independent valuer assessing the viability of the scheme how important the retail uses were to the viability of the scheme as a whole accordingly. The valuer advised that the retail uses make a significant contribution to the viability of the scheme and without them the scheme would not be viable. This would be the case if the retail uses were replaced with additional business uses and no affordable housing and contributions were provided. It also accounts for a reduction in the external and abnormal costs. Therefore, it is clear that the proposed retail uses are key to redeveloping this brownfield site at the current time.

In light of this, despite the adverse impact of the proposal on Paignton and Torquay town centres, which could be significant, officers consider that there is a material consideration of satisfactory significance to allow the scheme to go ahead. This is the necessity of the retail uses in bringing this derelict, brownfield site forward for redevelopment, including delivery of affordable housing. Officers have taken into

account the relevant policies in the NPPF which promote the reuse of brownfield land in reaching this decision. Not to accept the retail uses would effectively mean leaving the site in its current derelict condition until the viability of the other uses significantly improve, which is not guaranteed in the foreseeable future.

The above decision necessarily requires strict controls over the nature of the retail uses. The applicant has proposed the following draft condition:

"The retail floorspace hereby permitted shall not be used for the sale of any goods other than those within the following categories: DIY, home improvement and garden goods, furniture, furnishings, carpets/floor coverings, gas and electrical goods, as well as ancillary products."

The Council's retail consultant has recommended refining and tightening this condition in order to minimise the development's adverse impact on the town centres, for example clarifying the nature of the ancillary goods and floor area they occupy, and including minimum unit sizes at ground floor level of 929 sq m. This restriction is to better comply with the sequential test, so that it is more difficult to provide the units in the town centres. In terms of the sequential test, the retail consultant advises that provided the additional conditions are imposed it becomes more difficult to find suitable alternative sites in the town centres for the retail units. However, the retail consultant also advises that the Council should be satisfied that Crossways in Paignton and the Union Street site in Torquay are unlikely to become available for redevelopment within a reasonable period of time, so that these sites can be dismissed.

Officers consider it is difficult to be certain about timescales for the delivery of these projects. The production and agreement, by the Council, of masterplans will add certainty and momentum to bring forward regeneration projects. Masterplans are almost complete and will be reported to Council in the summer (2015). This will go hand in hand with the establishment of a delivery team, which will include promotion of these sites. There are signs of market improvements and interest in the above sites. It is the view of officers that the redevelopment of Crossways could be commenced within the next 5 years, but that land off Union Street - with its land ownership complexities - could take up to 10 years to deliver.

Therefore, subject to suitably worded restrictive 'bulky goods' retail conditions, the principle of the development in land use terms is considered to be acceptable. However, Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

2. Indicative Layout

The indicative layout is acceptable. The proposed land uses integrate with the surrounding land uses. The Torbay Design Review Panel questioned the retail park,

although this has been largely addressed under 1 above. Other comments can be addressed at reserved matters stage. Both South Devon College and the Police Architectural Liaison Officer have concerns with a pedestrian link from the residential development to the private College car parks behind the College. This can be explored further at reserved matters stage in terms of weighing up the benefits of pedestrian permeability against the concerns over crime and safety.

3. Access and Impact on Local Highways

Strategic Transport and Highways officers have reviewed the proposed access points and have no objections subject to securing funding by S278 agreement to provide a waiting lane for vehicles turning right onto Brixham Road from the residential access, and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction. These works are required for safety reasons in accordance with Local Plan Policy T26. Following discussions with the applicant's transport consultant, officers are also satisfied that the local highway network has enough capacity to absorb the traffic generated by the development. Therefore, the proposed development will not have an adverse impact on local highways and is acceptable in accordance with Policy T26. Residential and commercial travel plans should be secured by condition.

4. Visual Impact

The applicant has submitted a report assessing the visual impact of the development in a number of short, medium and long distance views. These focus on Long Road and Brixham Road, with a few long distance views from the south and west in South Hams district. These show that the development will only be visible from Long Road to the south and Brixham Road to the east. It will not be visible from the north, due to the sloping topography, and will be barely visible in long distance views in South Hams. South Hams District Council were consulted on the application, but provided no comments.

However, there is no assessment of views from the suburban areas to the east of Brixham Road and no consideration of visual impact from light pollution, although lighting can be addressed by condition. Notwithstanding these omissions, it is considered that there is scope to enhance the visual appearance of the site, especially through the sensitive integration of trees and soft landscape to soften the appearance of the buildings. A strong landscape scheme should inform the design layout at reserved matters stage accordingly. This should include multi-functional green infrastructure, as endorsed by Natural England, the RSPB and Natural Environment Services, such as SUDS, green walls and 'living' green roofs.

5. Contamination and Proposed Remediation Strategy

Due to the historic uses on the site there is a likelihood of there being contamination. The applicant submitted a Preliminary Risk Assessment - Land Quality, which summarises various investigations of contamination since the early 1990s when the

site was still in use for manufacturing. Much of the information is old, whilst the latest investigations carried out in 2011 found low levels of contamination. However, it concludes that the part of the site with most risk is the proposed residential development to the west. The commercial area to the south has some risk, but not as much as the area to the west. The north part of the site has low risk, as it was historically used for car parking, leisure and office space.

The Preliminary Risk Assessment states that further work is required to understand the contamination risks on the site and to develop a detailed remediation strategy based on an assessment of various remedial options. However, the Planning Statement submitted with the application, which was prepared by different consultants, states that the remediation strategy involves relocating some of the contaminate ground from the north of the site to the south, capping it and building the commercial uses above it. No other details are provided.

Despite the disconnect between the submitted technical report on this issue and the remediation strategy referred to in the Planning Statement, both the Environment Agency and Community Safety officers are satisfied with the level of information that has been provided at this outline stage, and therefore they have no objections to approving the application provided full conditions are attached to carry out the detailed site investigations and risk assessment, and identify the appropriate remediation accordingly, prior to commencement. This must include risks to controlled waters and inform the surface water drainage strategy.

Therefore, subject to the full conditions referred to, the proposal accords with Local Plan Policies EPS, EP3, EP7 and EP9.

6. Drainage

As described under the Summary of Consultation Responses above, Engineering officers accept the proposed drainage strategy of discharging surface water to soakaways on the site, as this is a sustainable method of dealing with surface water drainage to minimise flood risk and adapt to climate change. However, no details have been provided on the design of the soakaways and the surface water drainage system discharging to them. Therefore, a robust condition will be required to ensure these details are satisfactory prior to any development works commencing. The detailed drainage strategy must investigate and take into account the presence of solution features beneath the site. It must also take into account the risks of contamination leaching to controlled waters, as identified above. This includes the demolition, site clearance and construction phases. Therefore, subject to the robust condition referred to, the proposal accords with Policies INS, IN1 and EPS with regards to surface water drainage.

South West Water has commented that the public foul drainage network is unlikely to have capacity to accommodate the development. A pre-commencement condition is required to identify the necessary infrastructure improvements and implement them

prior to occupation of the dwellings accordingly. Therefore, subject to a suitably worded condition in this regard, the proposal accords with Local Plan Policies INS and IN1 with regards to foul drainage.

7. Ecology and Landscape

The site is located within the sustenance zone associated with the South Hams SAC at Berry Head. The SAC is designated for its greater horseshoe bat roost site, and calcareous heath and grassland habitats. Therefore, the proposed development has been screened to assess its likely significant effect on the SAC in accordance with the Habitats Regulations. The conclusion is that the development will not have a likely significant effect (alone or in-combination with other developments) on the SAC. However, this is subject to a condition to secure a detailed lighting strategy for the site based on the measures contained in Section 6 of the submitted Ecology and Landscape Report.

Further conditions should be added to secure: a Construction and Environmental Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP), the artificial bat roost referred to in the report and bird nesting/roosting boxes, in the interests of conserving and enhancing biodiversity. A further condition should be added to restrict the removal of trees and vegetation during the bird breeding season from March to September inclusive, unless in the presence of a suitably qualified ecologist. A detailed landscaping condition is also required to show that the tree and plant species are appropriate for the area and integrate with the ecological mitigation on surrounding development sites. This (and the landscape strategy in general) should be informed by a tree survey to be secured by pre-commencement condition, as recommended by the Council's Arboricultural Officer. Adequate tree/hedgerow protection measures also need to be secured throughout the site clearance and construction phases.

In terms of the impact of the development on other protected species, the Ecology and Landscape Report identifies the presence of other bat species, mainly common pipistrelles, and reptiles. A full condition ensuring the protection of these species during construction and the delivery of appropriate mitigation measures should be added accordingly.

Therefore, subject to the conditions referred to, the proposal accords with Local Plan Policies H11, LS, L8, L9, L10, NES, NC1, NC4 and NC5.

8. Noise

The applicant has submitted a Noise Impact Assessment, to assess noise levels around the site and its impact on the proposed housing. The dominant noise sources are from traffic using Brixham Road and plant at South Devon College. Two glazing and ventilation specifications have been recommended for habitable rooms in the dwellings facing Brixham Road and the rest of the site to ensure noise impact from

the road is acceptable inside the dwellings. A condition should be added accordingly.

Plant at South Devon College will have a significant effect on the proposed housing to the southwest of the site. An appropriate enclosure or acoustic fence surrounding the plant is recommended in the report. Noise calculations in the report have taken into account the provision of such an enclosure. As this land is not in the applicant's control, provision of the enclosure will have to be secured by s106 agreement not condition. However, a condition should be added restricting the occupancy of the dwellings affected until the enclosure has been provided, or until additional evidence is submitted to demonstrate that the noise impact is acceptable.

The report recommends provision of a close boarded fence along part of the northern boundary in order to mitigate noise impacts from the adjacent industrial estate. This should form part of the detailed landscape strategy for the site and be sited to ensure the protection and ongoing maintenance of the boundary hedgerow. It also recommends submission of a Noise Impact assessment if the STL/Syntech building adjacent to the site changes use or its operations. This would form part of a separate planning application if such a change required planning permission.

The report states that the proposed business and retail uses have potential to affect existing and proposed housing. However noise emission will be limited and typically lower than the historic use of the site. Therefore, noise impact on the nearest existing residential properties will not be significant. To reduce noise impact to the nearest proposed properties, a close boarded fence should be provided along the boundary; this will also mitigate noise impact from a proposed MUGA to the south of the site. As this could potentially have a visual impact, its provision should be taken into account in the detailed landscape strategy for the site and mitigation planting provided accordingly.

Noise limits for plant and machinery at the proposed business and retail uses at different times of the day are recommended and a condition should be added accordingly.

Therefore subject to the conditions referred to, the proposal accords with Local Plan Policies EPS and EP4 with regards to noise impacts.

9. Viability and Costs Evidence

The applicant has submitted a Financial Viability Assessment (FVA) with the application and this has been reviewed by an independent valuer. The independent valuer disagrees with a number of the assumptions in the FVA and negotiations are continuing. The applicant's current s106 offer is to provide £1.2m towards the provision of affordable housing and contributions. This equates to the site acceptability contributions comprising waste management and the necessary highway safety works, and 3.9% affordable housing, but no sustainable development contributions (see S106/CIL section below). The reason for such a low offer is the

viability of the scheme and particularly the additional abnormal costs of developing this brownfield site.

The total external and abnormal costs in the FVA come to £10.8m. The applicant has obtained an independent review of the construction costs used in the FVA from a surveying company in order to justify these costs. The surveying company consider that the external and abnormal costs should be increased to £12.95m. It is understood that this estimate is based on a review of the FVA and follows a site visit. However, the surveying company were not provided with any technical reports.

The independent valuer has recommended that the Council does not accept the external and abnormal costs at £12.95m, without further evidence. In addition the cost of abnormal should come off the land value and not affordable housing/contributions. National planning practice guidance states that assessment of costs should be based on robust evidence which is reflective of market conditions. Officers are currently not satisfied that satisfactorily robust evidence has been submitted to justify the high external and abnormal costs. With regards to remediation, the estimated cost in the FVA is £1.7m, which equates to approximately 17 (6.7%) affordable dwellings. However, as discussed under '5' and '6' above, the proposed remediation strategy has not yet been finalised. Therefore, it follows that this figure cannot be robust at this stage.

In light of the above, officers have requested further evidence from the applicant for the external and abnormal costs in the FVA. This could be costs evidence from other schemes where contamination was an issue, as well as independent quotations to carry out the works. In addition, officers are seeking to agree a suitable deferred contributions overage mechanism in the s106 agreement to secure additional affordable housing and sustainable development contributions should the viability of the scheme improve, e.g. if costs are found not to be as high as originally expected. Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

The above provisions have been taken into account in the officer recommendation accordingly.

10. Phasing and Delivery

The phasing and delivery of the different aspects of the development have not been agreed. Should the application be approved, these issues would be discussed with the applicant whilst the s106 agreement was being drafted. However, officers would

expect the business units and affordable housing to be delivered at an early stage of the development to secure their delivery. In addition, officers would seek the prioritisation of the business units for B1 use instead of B8 use, due the higher density/quality of employment they provide. A suitable clause will need to be added to the s106 agreement accordingly.

S106/CIL -

The application is in outline so the precise s106 contributions cannot be calculated at this stage. However, estimates of the contributions due in accordance with the Planning Contributions and Affordable Housing SPD, with a policy compliant level of affordable housing, are provided below:

Residential Development with 30% affordable housing (178 OM dwellings and 77 affordable dwellings - 26 SR / 26 AR / 25 Intermediate - where floor area of each dwelling is 75-94 sq m)

Waste Management (Site Acceptability) =	£12,750 (estimate)
Highway Works (Site Acceptability) =	£200,000 (estimate)
Education (Sustainable Development) =	£158,115 (estimate)
Greenspace and Recreation (Sustainable Development) =	£390,525 (estimate)
Lifelong Learning - Libraries (Sustainable Development) =	£57,150 (estimate)
Stronger Communities (Sustainable Development) =	£32,385 (estimate)
Sustainable Transport (Sustainable Development) =	£447,675 (estimate)

Total = £1,298,600 (estimate)

NB. If no affordable housing is provided, the total contribution would increase to £1,666,250.

B1 and/or B8 Business Units (5,574 sq m)

Sustainable Transport (Sustainable Development) =	£273,404.70 (B1 estimate)
	£124,021.50 (B8 estimate)

NB. Mitigating for B class jobs created would most likely reduce the above estimates to zero.

A1 'Bulky Goods' Retail Units (8,501 sq m)

Sustainable Transport (Sustainable Development) =	£5,385,638.53 (estimate)
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NB. This estimate is based on the estimate of trip generation for out of town centre retail development in Figure 9 of the SPD.

A3 Retail (139 sq m)

Sustainable Transport (Sustainable Development) = £88,060.67 (estimate)

NB. This estimate is based on the estimate of trip generation for out of town centre retail development in Figure 9 of the SPD.

The total contribution above comes to approximately £6.77m (£7.11m with a 5% admin charge), not including an ST contribution for the business units. This is a general estimate of the overall contribution a development of this scale should ordinarily provide. If the developer subsidy per affordable dwelling is taken to be £100k, the cost of delivering the affordable dwellings comes to £7.7m. Therefore, the overall cost to the developer of providing the policy compliant level of affordable housing and contributions is estimated to be approximately £14.47m (14.81m with a 5% admin charge).

The applicant has offered to pay a total financial contribution of £1.2m. If the Council applies the priorities set out in the SPD, site acceptability contributions should be sought first, then affordable housing and then sustainable development contributions. Subtracting the site acceptability contributions above from £1.2m leaves approximately £0.99m to pay for affordable housing. This equates to 10 affordable dwellings (3.9%). (NB. The applicant considers this funding will deliver a higher number of affordable dwellings using a lower developer subsidy, which officers do not agree with.)

Therefore, the offer from the applicant is to effectively pay the site acceptability contributions and provide 3.9% affordable housing, but no sustainable development contributions.

As discussed under Key Issues above, the reason why the level of affordable housing and contributions is so low is due to the viability of the development and particularly the high external and abnormal costs of redeveloping this brownfield site. Due to a lack of satisfactorily robust evidence provided in this regard, officers recommend the above contribution is accepted by Members only on the basis of a full open book deferred contributions overage mechanism, or alternative, which is acceptable to the Director of Place to secure additional affordable housing and sustainable development contributions should the viability of the development improve at implementation and throughout the construction phases. This mechanism will have to be secured in a s106 legal agreement, together with the site acceptability contributions and provision of 10 affordable dwellings. A suitable administration/monitoring contribution will also be required accordingly.

In addition, a clause should be added to any s106 agreement to promote B1 uses over B8 of the business units, due the higher density of employment they provide, which could take the form of marketing the units for B1 use for a set period of time before marketing them for B8 use.

In addition, a clause may need to be added to secure noise attenuation measures to

mitigate noise impact from plant at South Devon College on the proposed dwellings. This may require South Devon College to be signatories to the agreement.

Justifications:

The waste management contribution is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accords with Local Plan Policy W7. It will pay the cost of providing waste and recycling bins to the dwellings.

The highway works contribution is justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6). It will pay for the provision of a waiting lane for vehicles turning right onto Brixham Road from the residential access, and a combined pedestrian/cycle path from this access to the pedestrian crossing at the Long Road/Brixham Road junction.

The justification for the provision of affordable housing is set out in section 3 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6).

The education contribution is justified in paragraphs 4.40-4.46 of Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accords with Local Plan Policy CF7. It will be used towards funding Children's Services Capital Programme, which includes projects at schools in Paignton. The dwellings will place additional demand on local schools and the contribution will ensure local schools are provided with funding to mitigate the proposed development.

The greenspace and recreation contribution is justified in paragraphs 4.52-4.58 of Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards improving maintenance, management and equipment at existing facilities within easy walking distance of the site. The dwellings will place additional demand on these facilities and the contribution will ensure these facilities are provided with funding to mitigate the proposed development.

The lifelong learning contribution is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the cost of improving provision at Paignton Library and Information Centre, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and information Centre and the contribution will ensure these services are provided with funding to mitigate the proposed development.

The stronger communities contribution is justified in paragraphs 4.31-4.35 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the funding of a street warden (or part of a post) in the area in the interests of safer communities.

The sustainable transport contribution is justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and will be used towards the enhancement of sustainable transport modes in the vicinity of the development. The NPPF and Local Plan Policy T2 promote sustainable transport modes. The proposed development will generate additional trips and should therefore contribute toward sustainable transport in the area.

The administration/monitoring contribution is justified in paragraphs 5.6-5.8 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and will be used to administer/monitor the s106 agreement.

Status:

Negotiations are continuing with the applicant over the viability of the development and the appropriate level of affordable housing and financial contributions it can support. Consequently, heads of terms have not been agreed and instructions have not been sent to Legal Services to start preparation of a s106 agreement. An update will be provided verbally at committee.

Conclusions

In conclusion, the redevelopment of this brownfield site for housing and business uses should be supported. These uses are acceptable and would integrate with surrounding development well. The proposed A1 'bulky goods' and A3 retail uses would have an adverse impact on Paignton and Torquay town centres. This impact could be considered to be significantly adverse, due to the poor health and vulnerable condition of the town centres in terms of their vitality and viability. However, the proposed retail development is necessary to the viability of redeveloping the site. Therefore, this is considered to be a satisfactory material consideration to allow the development, provided strict controls are placed on the retail units to ensure they are truly 'bulky goods' stores. Members could decide to refuse the application on the basis of its impact on the town centres, if they consider this to carry more weight than the positive benefits of regenerating this brownfield site.

The applicant has offered £1.2m towards the provision of on-site affordable housing and contributions. This will effectively provide the site acceptability contributions of waste management and highway safety works, and 3.9% affordable housing (10 dwellings), but no sustainable development contributions. The reason for this is the viability of the scheme and apparently high costs associated with redeveloping this brownfield site. Officers are currently not satisfied with the robustness of evidence provided to justify the costs and have requested further evidence accordingly. In addition, the recommendation of approval is only on the basis of securing an appropriate deferred contributions overage mechanism in the s106 agreement to provide additional affordable housing and sustainable development contributions should the viability of the scheme improve at implementation or during construction of the development. This is likely to need to be a full open book assessment, although

negotiations with the applicant are continuing.

Members are recommended not to accept any lower provision of affordable housing than is currently offered. Therefore, the deferred contributions mechanism should account for 'overage' only and not 'underage' should costs increase. The positive benefits and sustainability of the scheme are already in question when weighed against the adverse retail impacts on the town centres and any lower affordable housing provision would make this balance even worse. Members could decide to refuse the application on the basis of a lack of satisfactorily robust costs evidence to justify the affordable housing provision offered.

Condition(s)/Reason(s)

01. Reserved Matters
02. Restrictive goods condition
03. Stop sub-division of the retail units
04. Define maximum net sales area and maximum area for ancillary cafe
05. No independently operated concessions
06. Hours of delivery
07. Staff Travel Plans
08. Waste Management Plans
09. Full Contaminated Land Condition
10. Controlled Waters Conditions
11. Construction Method Statement
12. Construction and Ecological Management Plan (CEMP)
13. Bird Breeding Season
14. Protected Species Mitigation - Bats and Reptiles
15. Bat Roost
16. Bird Nesting/Roosting Boxes
17. Tree Survey
18. Tree/Hedgerow Protection Measures
19. Detailed Landscaping
20. Landscape and Ecological Management Plan (LEMP)
21. Detailed Lighting Strategy
22. Noise Attenuation Measures
23. Noise Limits for Plant/Machinery
24. Surface Water Drainage Strategy
25. Foul Water Drainage Strategy
26. S278 Agreement
27. Residential Travel Plan
28. Secured By Design
29. Parking
30. Cycle and Bind Storage Details

Relevant Policies

HS - Housing Strategy
H2 - New housing on unidentified sites
H6 - Affordable housing on unidentified sites
H9 - Layout, and design and community aspects
H10 - Housing densities
H11 - Open space requirements for new housing
ES - Employment and local economy strategy
E5 - Employment provision on unidentified sit
E6 - Retention of employment land
E9 - Layout, design and sustainability
SS - Shopping strategy
S6 - Retail development outside identified To
CFS - Sustainable communities strategy
CF2 - Crime prevention
CF6 - Community infrastructure contributions
CF7 - Educational contributions
INS - Infrastructure strategy
IN1 - Water, drainage and sewerage infrastructure
W6 - New development and the minimisation of
W7 - Development and waste recycling facilities
LS - Landscape strategy
L8 - Protection of hedgerows, woodlands and o
L9 - Planting and retention of trees
L10 - Major development and landscaping
NCS - Nature conservation strategy
NC1 - Protected sites - internationally import
NC4 - Wildlife Corridors
NC5 - Protected species
EPS - Environmental protection strategy
EP1 - Energy efficient design
EP3 - Control of pollution
EP4 - Noise
EP5 - Light pollution
EP6 - Derelict and under-used land
EP7 - Contaminated land
EP8 - Land stability
EP9 - Groundwater
BES - Built environment strategy
BE1 - Design of new development
BE2 - Landscaping and design
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T25 - Car parking in new development
T26 - Access from development onto the highway

NPPF - National Planning Policy Framework
SS2 - Future Growth Areas
SS4 - The economy and employment
SS5 - Employment space
SS11 - Housing
TC3 - Retail Development
H1LFS - Applications for new homes

Application Number

P/2014/1238

Site Address

Paignton Pier
Eastern Esplanade
Paignton
Devon
TQ4 6BW

Case Officer

Carly Perkins

Ward

Roundham With Hyde

Description

New first floor over existing building for outdoor cafe use. Entrance towers over existing building. Bridge connecting new first floor over existing two buildings. New disabled toilets. Re-cladding & re-fenestration of existing buildings. General use of pier open decks.(Revised plans received)

Executive Summary/Key Outcomes

The application is for Paignton Pier which is located to the east of Esplanade Road. The pier is within flood zones 2 and 3 and positioned close to three listed buildings, the Redcliffe Hotel to the north and Harbour Lights and Paignton Harbour to the south. The Roundham and Paignton Conservation Area boundary lies to the south of the site.

The pier includes two flat roofed single storey buildings either side of the Pier entrance at the shoreward (western) end which leads on to a pavilion type building used for arcades and an open air area towards the pier-head that is used for rides. The proposal is for the erection of entrance towers to the western end of the pier, a first floor extension to the rear of the entrance space and the use of the roof space above the northern and southern wings for seating, the erection of new toilets, the recladding and refenestration of the existing buildings and the general use of the open decks to the eastern end of the pier.

The principle of the proposal is considered acceptable, and would make a positive contribution to the tourism offer in Paignton through the enhancement of an existing tourism facility in a sustainable location in terms of walking, cycling and public transport opportunities. The design of the proposal reflects the original design of the Pier in 1878 with its 'carnavalesque' roof design. The choice of materials and form of the building is considered acceptable in terms of the setting of the nearby listed buildings and also to the Urban Landscape Protection Area that is located to the west.

Subject to comments from Natural England with regard to the impact on the

Marine Special Area of Conservation which lies beneath the pier and the submission of a satisfactory site specific flood risk assessment by the applicant the works are considered acceptable.

Recommendation

Conditional approval; subject to consultation responses from Natural England with regard to the Marine Special Area of Conservation and the applicant submitting a site specific flood risk assessment which is acceptable to the Director of Place, within 3 months of the date of this committee or the application be reconsidered in full by the committee; unless otherwise agreed by the Director of Place in consultation with the Chairman of the Development Management Committee; conditions are listed at the end of this report, however final drafting and determination of appropriate planning conditions to be delegated to the Director of Place.

Statutory Determination Period

8 weeks, the determination date is the 12th March 2015; this has been extended to the 27th March 2015 to allow the site specific flood risk assessment to be submitted, comments from Natural England to be received and for the application to be considered by the Development Management Committee.

Site Details

The application site is a Victorian pier originally built in 1878/79. The pier comprises an entrance building, a pavilion building along the neck of the pier and then an open deck area towards the pier head. The pier is located west of the Urban Landscape Protection Area and Coastal Preservation Zone and above the Marine Special Area of Conservation. The pier is located within flood zone 2 and 3 and positioned close to three listed buildings, the Redcliffe Hotel to the north and Harbour Lights and Paignton Harbour to the south. The Roundham and Paignton Conservation Area boundary lies to the south of the site.

Detailed Proposals

The proposal is for the erection of entrance towers to the western end of the pier, a first floor extension to the rear of the entrance space and the use of the roof space above the northern and southern wing for seating, the erection of new toilets, the recladding and refenestration of the existing buildings and the general use of the open decks to the eastern end of the pier. The proposal include neon sting lighting, street lamps to match those already existing on the pier and materials include glass reinforced plastic cladding in cream and turquoise, glazing and lead effect roofing canopies.

Summary Of Consultation Responses

Senior Design and Heritage Officer: The proposal is acceptable and its impact on the designated heritage assets will be negligible.

Drainage Engineer: The existing information supplied does not address issues with regard to flood risk, flood mitigation or flood safety. Before planning permission can be granted the applicant must supply a revised site specific flood risk assessment demonstrating how the risk of flooding is to be mitigated together with details of the flood plan identifying in detail the evacuation and flood response procedures that are to be followed.

Marine Management Organisation: The Marine Management Organisation would consider works below the mean high water spring mark; works are described as deposits, removal, construction dredging etc. Works such as painting of the pier supporting structure may require a licence by the MMO.

South West Water: No objection in terms of its impact upon the public foul drainage network.

Environmental Health: Due to the distance between the site and nearby businesses a condition in relation to the use of music is not necessary; any complaints could be considered using Statutory Nuisance Provisions. An hours of operation condition could however be imposed to control the hours during which music could be played.

Environment Agency: No comment.

Natural England: Comments awaited.

Summary Of Representations

One representation has been received. Issues raised:

- Impact on existing drainage as a result of additional cafe and toilets
- Impact of an additional takeaway within close proximity of existing similar businesses

This representation has been sent electronically for Members consideration.

Relevant Planning History

P/2013/0869 Replacement and upgrade of existing public telephone kiosk with kiosk combining public telephone serve and ATM service APPROVED 03.10.2013

P/1996/0139 Retention of kiosk and use for sale of sea food, ice cream, toffee apples, popcorn, renewal of application APPROVED 18.03.1996

P/1980/1636 Renew superstructure and widen APPROVED 28.08.1980

Key Issues/Material Considerations

The main issues are the impact of the proposal on tourism, the character and appearance of the area, local amenity and flood risk.

Tourism:

Policy TU3 states that proposals for the improvement of existing and the development of new tourist facilities on sites other than those identified in Policies TU1 and TU2 will be permitted provided they preserve or enhance the attractiveness and competitiveness of the resort in terms of the range and quality of its tourist facilities, the location is readily accessible by a range of means of transport, the scheme is of a satisfactory scale and design in relation to its surroundings and does not harm residential amenity, the scheme does not conflict with relevant landscape protection policies and does not cause harm to Torbay heritage resource. Paragraph 5.43 of the explanation expands on this to say that proposals that enhance the attractiveness of the resort, particularly all weather and non-seasonal facilities will be welcomed in principle. In this instance the proposal is considered acceptable making a positive contribution to the tourism offer in Paignton through the enhancement of an existing all weather (at least in part) tourism facility in a sustainable location close to existing public transport, walking and cycling routes.

Design:

The proposal looks to reflect the flamboyant design of the original pier in 1878. The pier at present is reasonably low key with single storey flat roof elements fronting on to the green and whilst the use of lighting has been explored the pier is currently relatively understated. The design of the proposal reflects the original design of the Pier in 1878 with its 'carnavalesque' roof design and colourful use of lighting. The design is unlike other buildings and structures nearby but imitates the style of a traditional Victorian pier which would not look out of place in seaside locations as a standalone structure. The proposal sits just outside of the coastal preservation zone and the urban landscape protection area. It is noted that the proposal will have an impact on the setting of these designations. In addition whilst some distance from the listed buildings (Harbour Lights, Redcliffe Hotel and Paignton Harbour) and the Roundham and Paignton Harbour Conservation Area, all are visible in views of the pier such that the proposal would affect the setting of these heritage assets. Whilst it is accepted that the proposal will become more prominent due to the increase in height, the principle of the development is supported and it is considered that on balance as the overall design of the scheme is architecturally sound, the increase in visibility is

also acceptable. Whilst noted that views of the pier are possible within the context of the listed buildings and conservation area the impact on their setting is considered limited by reason of the separation distances.

Paragraph 134 of the National Planning Policy Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this instance in line with comments above, the proposal will contribute to the enhancement of the area as a location for all year round tourism in line with policies TUS and TU3 of the Torbay Local Plan 1995-2011. In addition the works include the positive enhancement of the pier improving its appearance within the setting of the nearby listed buildings and conservation area and therefore it is considered that the works accord with paragraph 134 of the National Planning Policy Framework. Similarly with regard to the coastal preservation area and urban landscape protection area, the works relate to an existing structure and the footprint of the works does not exceed those of the existing pier. As above, whilst the proposal will increase visibility of the pier the proposal reflects the original Victorian architecture which is considered to be a suitable design for a standalone structure such as this. The design has a mixture of roof forms and storey heights which help to break up the scale of the structure in views from the north, south and west and as such is considered acceptable.

The general use of the open air decks toward the rear of the pier up to a height 6m (stationary position) is considered acceptable and a condition has been recommended restricting the height of any rides in this area to 6m maximum. A height of 6m has been recommended as this would accord with the eaves height of the rear elevation of the entrance building and therefore would reflect the scale of the proposed building rather than appearing overly dominant towards the rear of the pier.

Flood Risk and Drainage:

The application site is within flood zone 2 and 3 and although noted that the works are largely located at a higher level, flood mitigation and safety procedures still need to be considered. Some information has been provided with regard to flood risk and mitigation however the Council's Drainage Engineer has stated that this isn't sufficient to demonstrate that the issue of flood risk has been addressed and that a revised site specific flood risk assessment demonstrating how the risk of flooding is to be mitigated together with details of the flood plan must be submitted prior to planning permission being granted.

Representations with regard to drainage have been noted and in response South West Water have been consulted with regard to the foul drainage capacity in light of the additional toilet blocks and cafe. South West Water has not raised any concerns with regard to foul drainage as a result of this proposal.

Local Amenity:

The overall use of the pier as a leisure/entertainment facility will remain as existing and in light of the distance from neighbouring buildings the proposal is not considered to result in any serious detriment to neighbouring amenity.

Other Issues:

Representations with regard to the impact of a takeaway at lower ground floor level are noted, this has now been removed from the application and therefore this issue has not been considered further.

S106/CIL -

N/A

Conclusions

The principle of the proposal is considered acceptable making a positive contribution to the tourism offer in Paignton through the enhancement of an existing tourism facility in a sustainable location in terms of walking, cycling and public transport opportunities in accordance with policies TUS and TU3 of the Torbay Local Plan 1995 -2011. The design of the proposal reflects the original design of the Pier in 1878 with its 'carnavalesque' roof design, the choice of materials and form of the building is considered acceptable in terms of the setting of the nearby grade II listed buildings, conservation area and the urban landscape protection area and coastal preservation area to the west. Subject to comments from Natural England with regard to the impact on the Marine Special Area of Conservation which lies beneath the pier and the submission of a satisfactory site specific flood risk assessment by the applicant the works are considered acceptable.

Condition(s)/Reason(s)

01. No music shall be played externally outside of the following hours 1100-2200 daily.

02. Children/adult fairground rides located within the areas hatched green and purple on drawing number 17 ('Activity Plan') shall be no more than 6m tall when in a static position.

Relevant Policies

- TUS Tourism strategy
- TU3 New tourist facilities elsewhere
- EPS Environmental protection strategy
- BES Built environment strategy

BE1 Design of new development
BE5 Policy in conservation areas
BE6 Development affecting listed buildings
NPPF National Planning Policy Framework

Agenda Item 9

Application Number

P/2014/0901

Site Address

250 Babbacombe Road
Torquay
Devon
TQ1 3TA

Case Officer

Matt Diamond

Ward

Wellswood

Description

Construction of additional car parking following demolition of garden centre (retrospective), provision of two water tanks and a pump house, and insertion of mezzanine floor and exterior doors in existing building. (Revised description)

Executive Summary/Key Outcomes

The application is to insert a mezzanine floor in the former Focus store, now occupied by The Range, at 250 Babbacombe Road, Torquay, together with external alterations to the building, reorganisation of the car park to include 18 more spaces and external plant, following demolition of a greenhouse extension. The application has been implemented in full and is now entirely retrospective.

The mezzanine will be used for the sale of A1 goods (with ancillary cafe) in accordance with the extant permission for the store ref. 83.353, which has a condition restricting the use of the premises to a garden centre and for the sale of Do-It-Yourself materials. However, a concurrent application has been submitted with this one to vary this condition to allow the sale of a wider range of goods and allow occupation by The Range (ref. P/2014/0902). The two applications should be considered together, but decisions on each application need to be robust in their own rights.

The application is considered to be acceptable, subject to a s106 agreement to secure necessary highways infrastructure and a number of conditions which are listed at the end of this report. These include conditions to stop the sub-division of the store in order to pass the sequential test and require details of external lighting to overcome a number of complaints that have been made by local residents in this regard.

Recommendation

Conditional approval; subject to full payment of contributions or the signing of a s106 legal agreement to secure contributions prior to the agreed extended time period, or the application be refused, and no later than 3 months from the date of this committee or the application be reconsidered in full by the committee; conditions are listed at the end of this report, however final drafting and determination of appropriate planning conditions to be delegated to the Director of Place.

Statutory Determination Period

The application was validated on 16.09.2014. An extension of time to determine the application has been agreed to 27.03.2015.

The additional time was agreed in order to allow the applicant to respond to the advice letter prepared by the Council's retail consultant dated 19.12.2014, which stated that insufficient information had been provided by the applicant to demonstrate compliance with the sequential test and to show that the proposal will not have a significant adverse impact on investment and town centre vitality and viability. The applicant submitted a Supplementary Retail Statement on 01.02.2015 and further advice was received from the Council's retail consultant on 01.03.2015 (letter dated 26.02.2015). The two advice letters have been circulated to Members.

Site Details

The site address is 250 Babbacombe Road, Torquay. The site area is 1.18ha. It forms part of the former Walls Hill limestone quarry. It comprises the former Focus DIY store in the southeast corner (now in use by The Range) and associated car park to the north and west. Until 28 November 2014 the store building had been vacant for a number of years. In addition, until the latter half of 2014 a garden centre had operated on the site and the associated greenhouse extension and structures have since been demolished. Vehicular access is provided via a two way access onto Babbacombe Road to the southwest. Trees and vegetation line part of the northwest and southwest boundaries. Another line of trees and vegetation split the car park, but some of this vegetation has been removed.

The site is bounded by a scout hut and quarry business to the north, the former quarry cliff to the east, a public footpath and woodland to the south, and Babbacombe Road to the west. The wider area is characterised by housing to the west, Walls Hill public open space to the north and east (accessed via the footpath) and the Palace Hotel to the south.

The following designations in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan') affect the site and its setting:

- o Warberries/Walls Hill wildlife corridor passes through the north of the site
- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Area of Great Landscape Value (AGLV) adjoins site along east boundary
- o Coastal Preservation Area (CPA) adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Protection Zone (CPZ) in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south

- o Palace Hotel (northern edge) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

The following designations affect the setting of the site in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'):

- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Undeveloped Coast adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Change Management area in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel Ground (North) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

Wildlife corridors are not shown on the Policies Map for the emerging Local Plan, but they still exist and are shown on Map 3 of the Torbay Green Infrastructure Delivery Plan (April 2011), which is part of the evidence base for the new Local Plan.

The site is in an out of centre location. It is 580m from Babbacombe Local Centre, 970m from Wellswood Local Centre, 1.26 km from St Marychurch District Centre and 2 km from Torquay town centre. Babbacombe Road is a bus route with two regular services, 11 and 32/32A/32C.

Detailed Proposals

The proposals are to insert a mezzanine floor in the store of 1,545 sq m for A1 retail use, including an ancillary cafe of 190 sq m, carry out external alterations to the building by adding new doors to the rear and side elevations, and reorganise the car park to provide 18 more spaces (159 to 177). Since the application was submitted it has been revised to include provision of two water tanks and a pump house in the north corner of the service yard. The application is also for retrospective consent to demolish the greenhouse extension and structures.

Taking the floor area of the demolished greenhouse extension into account, the net increase in gross floor area of the proposal is 1,005 sq m. This does not take into account the external area of the former garden centre. The plans indicate that the area to the rear and side of the building will be used as a garden centre.

A separate application has been submitted to vary the condition restricting the sale of goods on the premises, to allow more goods to be sold other than garden centre and Do-It-Yourself materials (ref. P/2014/0902/VC).

The application has been implemented and is therefore now entirely retrospective.

Summary Of Consultation Responses

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: Refurbishments of retail units are difficult to influence as companies such as the Range normally have their own criteria and requirements for layout and physical security. If BREEAM is being sought this would require written confirmation from the PALO BREEAM Assessor that the security measures proposed are appropriate and in line with the principles of Secured By Design.

Torbay Development Agency: No response.

Strategic Transportation: Initial comments stated £102,491 sustainable transport contribution required in accordance with Planning Contributions and Affordable Housing SPD based on net additional retail floorspace. The exact level of additional traffic and impact upon the highway network has not been clearly set out in the Transport Assessment, therefore unable to comment on whether or not the proposal is acceptable. The TA is not robust. Additional crossing points are required in the car park to facilitate better pedestrian access. Service vehicle tracking diagram required to show that service vehicles can exit the service yard in forward gear. Staff travel plan required.

Additional comments questioned validity of further technical information received. Traffic generation has calmed down since opening and travel patterns likely to revert to peaking at holiday times and peak weekends. No appropriate data provided for a recognised neutral time of year based on several stores instead of only one at Plymouth, which is in a different type of location. £102,491 contribution still required, including £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.

Community Safety: Initial comments were no comments to make. Further to complaints received about external lighting, additional comments raised an objection to the external lighting, due to light pollution. A condition was recommended accordingly. Further discussions confirmed the lighting does not constitute a statutory nuisance. In addition, a condition was recommended limiting the hours deliveries can be made to between 07:00 and 23:00 Monday to Friday, and between 07:00 and 13:00 on Saturdays to protect residential amenity from noise. (This would also need to be added to P/2014/0902 to vary condition 5 of the extant consent. It is assumed the recommendation extends to no deliveries on Sundays and bank holidays.)

Waste: Unlikely to be any waste issues.

Building Control: No comments - building regulations being dealt with by a private sector Building Control Body.

Summary Of Representations

One representation received objecting to lighting on the building, which is described as excessively bright at night and asking for baffles to be installed to direct it down instead of illuminating the whole area.

Relevant Planning History

P/2014/0902/VC: Variation of condition 5 of previous planning permission (P/1983/0353) to permit additional items to be sold: Pending consideration.

P/2012/1124/VC: Variation of Condition 3 to enable deliveries to take place between 7am and 11 pm on Mondays-Saturdays and 8am to 6pm on Sundays and Bank Holidays and the removal of Condition 5 pursuant to planning permission reference 83.353 allowing the sale of all goods within Use Class A1, thereby allowing the premises to be used as a supermarket.: Refused 28.01.2013 (Appeal dismissed 15.01.2014)

P/2012/1123/MPA: Alterations to the building associated with its conversion to a supermarket and extension to the internal mezzanine floor by 282 sqm for ancillary plant and offices [non sales area]; together with new hard and soft landscaping, car park layout and site access arrangements (following demolition of greenhouse extensions, 297 sqm).: Refused 15.01.2013 (Appeal dismissed 15.01.2014)

ZP/2011/0698: Change of use and refurbishment of existing vacant unit to provide a food store of approx 3,500sqm with 175 car parking spaces (pre-application enquiry):

ZP/2008/0267: Extensions To Site And Use As A Supermarket (pre-application enquiry): Approve 01.04.2008

P/2005/1102/AD: Illuminated/Non Illuminated Signs: Approved 11.08.2005

99/1415/PA: Variation of condition 5 of application 83.353 to allow the sale of pets, pet food and pet products: Approved 15.11.1999

98/0470/PA: Change of use from DIY superstore to a store for the sale of furniture, carpets, beds and soft furnishings: Approved 30.04.1998

98/0140/PA: Variation of conditions 3 & 5 of application 83.353, to allow use of store as a food supermarket, including alterations and changes to form additional car parking and servicing areas: Refused 15.01.1999

83.2843: Erection of greenhouse Extension, Walls Hill Quarry, 250 Babbacombe

Road, Torquay: Approved 17/02.1984

83.353: Erection of D.I.Y. Home and Garden Centre, with ancillary parking and service areas, Walls Hill Quarry, Babbacombe Road, Torquay: Approved 23.09.1983

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Insertion of the Mezzanine
2. Impact on Local Highways
3. Demolition of Buildings and Layout of Car Park
4. Impact on Residential Amenity from Light Pollution and Noise
5. Impact on Ecology from Lighting
6. Alterations to Building

1. The Principle of the Insertion of the Mezzanine

The mezzanine floor is 1,545 sqm. Taking into account the demolition of the greenhouse extension, the net increase in A1 floor area on the site is 1,005 sq m. As the site is in an out of centre location, the sequential test must be applied. An impact assessment is not required because the net increase in floor area is below the default threshold of 2,500 sq m set in the NPPF. Whilst Policy TC3 of the emerging Local Plan sets a threshold of 1,000 sqm for A1 retail selling comparison goods in out of centre locations, this is not adopted policy. Furthermore, objections have been received to this new policy, so limited weight can be given to it at the present time.

The applicant had originally provided insufficient information in the Supporting Retail Statement to demonstrate compliance with the sequential test. This related to the issue of flexibility and the requirement to search for alternative sites across the whole of Torbay. Therefore, a Supplementary Retail Statement was submitted. The Council's retail consultant has reviewed this document and concluded that the application now passes the sequential test, subject to a condition to stop the sub-division of the retail store.

Whilst an impact assessment is not required for the application, the applicant has predicted the turnover of the mezzanine and variation of Condition 5, subject to application ref. P/2014/902, to be £1.74m. The majority of trade draw is predicted to be from other out of centre stores in Torquay (64%), whilst 13% is predicted to be drawn from Torquay town centre and 4% from the Willows district centre. The predicted impact on both of these centres is 0.1% each. Whilst this impact appears to be very low, the Council's retail consultant believes limited weight can be given to this information as it is based on DIY goods shopping patterns only and therefore does not reflect the full range of goods being sold.

As the proposal passes the sequential test and an impact assessment is not required, the insertion of the mezzanine floor in the building is considered to be acceptable and in accordance with the relevant parts of Local Plan Policies SS and S6, and paragraph 24 of the NPPF. However, this is subject to a condition to stop the sub-division of the store.

2. Impact on Local Highways

As described under the Summary of Consultation Responses above, the Transport Assessment submitted with the application was considered by Strategic Transport officers to not be robust. The applicant submitted further technical information to demonstrate that the proposal will not result in additional trips, but Strategic Transport officers consider the robustness of this additional information to still be questionable.

However, following observation of the store operating on week days, Strategic Transport officers consider the proposal to be acceptable, subject to payment of a £102,491 financial contribution in order to: implement parking restrictions on local roads; carry out highway safety works to the junction at Babbacombe Road, St Anne's Road and Babbacombe Downs Road; and carry out sustainable transport enhancements in the area. The contribution is based on the net additional floor area of the proposal and associated trip generation.

The contribution will need to be secured in a s106 agreement. A condition to secure a Staff Travel Plan within three months of the date of decision is also required. Subject to these provisions, the proposal is considered to be acceptable and in accordance with Local Plan Policies TS, T1, T2 and T26.

3. Demolition of Buildings and Layout of Car Park

The demolition of the greenhouse extension is acceptable. The car park on the site has increased the number of spaces from 159 to 177, a gain of 18 spaces. This number accords with the Council's adopted car parking standards under Local Plan Policy T25. Cycle parking is required in accordance with Local Plan Policy T3. This should be secure and ideally covered. The Design and Access Statement states that 16 covered cycle spaces will be provided. A condition is required to ensure the cycle parking is provided within three months of the date of decision.

Pedestrian crossing points have been provided in the car park in accordance with Strategic Transport officers' comments. In addition, a tracking diagram has been submitted to show that an articulated vehicle can enter and exit the service yard in forward gear in the interests of pedestrian safety.

Pockets of soft landscape have been provided in the car park in order to soften its visual impact. This is acceptable and appears to be well maintained. A

Landscape and Ecological Management Plan (LEMP) is required by condition to ensure it is maintained in perpetuity in the interests of the amenities of the area. This should identify opportunities for biodiversity enhancements in accordance with paragraphs 109 and 118 of the NPPF.

4. Impact on Residential Amenity from Light Pollution and Noise

External lighting has been added to the building and lighting columns have been erected in the car park. The lights appear to be LED and are very bright. A number of complaints have been received from local residents concerning the brightness of the lights and their impact.

Details of the external lighting have been requested from the applicant, but these details have not been forthcoming. It is understood that the lighting is now being switched off at 10:30pm in order to limit their impact.

As discussed with Community Safety officers, a condition is required to approve details of the lighting within three months of the date of decision. The details must demonstrate that there will be no detriment to residential amenity in the surrounding area.

Community Safety officers have raised no objections to the plant at the store in terms of noise. However, they have recommended a condition to limit the hours of delivery to between 07:00 and 23:00 Monday to Friday, and 07:00 and 13:00 on Saturdays in order to reduce disturbance to local residents. The condition should also prevent deliveries taking place on Sundays and bank holidays.

Therefore, subject to the conditions referred to, the proposal is considered to be acceptable and in accordance with Local Plan Policies EPS, EP4 and EP5.

5. Impact on Ecology from Lighting

The northern part of the site is a designated wildlife corridor. Whilst an Extended Phase 1 Habitat Survey has not been submitted, the species considered most likely to be affected by the proposal are bats. Bats are light sensitive and excessive lighting can disrupt their commuting patterns when foraging for food. Therefore, it will be necessary for the lighting condition referred to under 4. above to require details of how the lighting will not have an adverse impact on bats.

6. Alterations to Building

The alterations to the building are minor, comprising new doors on the rear and side elevations of the building to facilitate access to the area behind the building so it can be used as a garden centre. These alterations are acceptable.

S106/CIL -

A financial contribution of £102,491 is required towards the following:

- o £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.
- o £33,491 to alter radius kerbs and islands at Babbacombe Road/St Anne's Road/Babbacombe Downs Road junction in the interests of pedestrian safety.
- o £6,500 for bus shelter on northbound side of Babbacombe Road near the store in the interests of promoting sustainable modes of travel.
- o £60,000 for a shared pedestrian cycleway along Babbacombe Road linking St Anne's Road and Asheldon Road in the interests of promoting sustainable modes of travel.

Justifications

The contributions towards highway works are justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6 and T26.

The contributions toward sustainable transport measures are justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6, T1 and T2, and paragraph 32 of the NPPF.

Status

The applicant has not yet confirmed whether they agree to pay the above s106 contributions. Therefore, heads of terms have yet to be agreed and instructions have not been sent to Legal Services to start preparation of the s106 agreement. An update will be provided verbally at committee.

Conclusions

In conclusion, the proposed development is acceptable, subject to a condition to stop the sub-division of the retail store and other conditions listed at the end of this report. In addition, a s106 agreement to secure necessary highway safety works and sustainable transport enhancement measures is required. These are necessary in order to mitigate the impact of the development on the local highway network in terms of additional trips created.

Condition(s)/Reason(s)

01. Stop sub-division of store
02. Staff Travel Plan
03. Cycle parking provision

- 04. Landscape and Ecological Management Plan (LEMP)
- 05. Lighting details
- 06. Hours of delivery

Relevant Policies

- SS - Shopping strategy
- S6 - Retail development outside identified To
- CF2 - Crime prevention
- CF6 - Community infrastructure contributions
- L10 - Major development and landscaping
- NCS - Nature conservation strategy
- NC4 - Wildlife Corridors
- NC5 - Protected species
- EPS - Environmental protection strategy
- EP4 - Noise
- EP5 - Light pollution
- EP6 - Derelict and under-used land
- BES - Built environment strategy
- BE2 - Landscaping and design
- TS - Land use transportation strategy
- T1 - Development accessibility
- T2 - Transport hierarchy
- T3 - Cycling
- T25 - Car parking in new development
- T26 - Access from development onto the highway
- NPPF - National Planning Policy Framework

Agenda Item 10

Application Number

P/2014/0902

Site Address

250 Babbacombe Road
Torquay
Devon
TQ1 3TA

Case Officer

Matt Diamond

Ward

Wellswood

Description

Variation of condition 5 of previous planning permission (P/1983/0353) to permit additional items to be sold.

Executive Summary/Key Outcomes

The application is to vary Condition 5 of planning permission ref. 83.353 to allow more goods to be sold other than garden centre and Do-It-Yourself materials from the premises at 250 Babbacombe Road, Torquay, currently occupied by The Range, so that the store can continue to be occupied by The Range with the benefit of planning permission. The application has been implemented in full and is now entirely retrospective.

The application is almost six months old and during that time the applicant has failed to demonstrate in a suitably robust impact assessment that the development will not have a significant adverse impact on town centre investment, vitality and viability. Therefore, in accordance with national planning practice guidance the application should be refused, as failure to undertake an impact test can in itself be a reason for refusal. Members should be aware that if they decide to refuse the application, the implication of this decision is that enforcement action should be taken to cease the current use.

However, based on the information submitted to date, if Members wish to approve the application having weighed up the positive and negative effects of the proposal and all material considerations, including the positive benefits of reusing a previously vacant building and the jobs that have been created, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

1. Restrictive goods condition
2. Stop sub-division of the store
3. Define maximum net sales area and maximum area for ancillary cafe
4. No independently operated concessions
5. Hours of delivery

6. Staff Travel Plan
7. Waste Management Plan

Recommendation

Refusal; for the reason set out in this report.

Statutory Determination Period

The application was validated on 16.09.2014. An extension of time to determine the application has been agreed to 27.03.2015.

The additional time was agreed in order to allow the applicant to respond to the advice letter prepared by the Council's retail consultant dated 19.12.2014, which stated that insufficient information had been provided by the applicant to demonstrate compliance with the sequential test and to show that the proposal will not have a significant adverse impact on investment and town centre vitality and viability. The applicant submitted a Supplementary Retail Statement on 01.02.2015 and further advice was received from the Council's retail consultant on 01.03.2015 (letter dated 26.02.2015). The two advice letters have been circulated to Members.

Site Details

The site address is 250 Babbacombe Road, Torquay. The site area is 1.18ha. It forms part of the former Walls Hill limestone quarry. It comprises the former Focus DIY store in the southeast corner (now in use by The Range) and associated car park to the north and west. Until 28 November 2014 the store building had been vacant for a number of years. In addition, until the latter half of 2014 a garden centre had operated on the site and the associated greenhouse extension and structures have since been demolished. Vehicular access is provided via a two way access onto Babbacombe Road to the southwest. Trees and vegetation line part of the northwest and southwest boundaries. Another line of trees and vegetation split the car park, but some of this vegetation has been removed.

The site is bounded by a scout hut and quarry business to the north, the former quarry cliff to the east, a public footpath and woodland to the south, and Babbacombe Road to the west. The wider area is characterised by housing to the west, Walls Hill public open space to the north and east (accessed via the footpath) and the Palace Hotel to the south.

The following designations in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan') affect the site and its setting:

- o Warberries/Walls Hill wildlife corridor passes through the north of the site
- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Area of Great Landscape Value (AGLV) adjoins site along east boundary

- o Coastal Preservation Area (CPA) adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Protection Zone (CPZ) in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel (northern edge) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

The following designations affect the setting of the site in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'):

- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Undeveloped Coast adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Change Management area in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel Ground (North) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

Wildlife corridors are not shown on the Policies Map for the emerging Local Plan, but they still exist and are shown on Map 3 of the Torbay Green Infrastructure Delivery Plan (April 2011), which is part of the evidence base for the new Local Plan.

The site is in an out of centre location. It is 580m from Babbacombe Local Centre, 970m from Wellswood Local Centre, 1.26 km from St Marychurch District Centre and 2 km from Torquay town centre. Babbacombe Road is a bus route with two regular services, 11 and 32/32A/32C.

Detailed Proposals

The proposal is to vary condition 5 of extant planning permission ref. 83.353 to allow more goods to be sold other than garden centre and Do-It-Yourself materials. The extant condition is as follows:

"The premises shall be used only as a garden centre and for the sale of Do-It-Yourself materials and for no other purposes (including any purpose in Class 1 of the Schedule to the Town and Country Planning (Use Classes) Order, 1972.

Reason: The Local Planning Authority consider that the use of the building

for the purpose specified is appropriate but that a proposal to use the building for any other purposes would need to be made the subject of a separate application to be considered on its merits."

The proposed varied condition is as follows:

"The retail unit shall be used for retail purposes including the sale of DIY, hardware and garden centre products, kitchens, furniture, carpets and floor coverings, soft and hard furnishings including household textiles, electrical goods, pictures, homewares, glassware and tableware, lighting, cycles, motor and cycle accessories, pet food and pet products, and office equipment (including stationery, arts and crafts and office supplies), seasonal goods and giftware only. However without the written consent of the Local Planning Authority goods falling outside of this range may be sold where they form a minor and ancillary part of the operation of the retail use.

Notwithstanding the provisions above and for the avoidance of doubt the sale of the following additional items will be permitted to be sold:

- (i) The sale of non-fashion clothing from up to 30 sq.m.
- (ii) The sale of recreational and camping goods from up to 200 sq.m.
- (iii) The sale of confectionery from a maximum of up to 32 sq.m. net.

All of the above items can only be sold in conjunction with the occupation of the retail warehouse by a single retailer."

A further condition is suggested in relation to the cafe on the mezzanine floor:

"1. The café use hereby permitted shall not exceed 190 sq.m. in floor area nor be operated independently of the retail warehouse. In the event that the café use is ceased, the floor area occupied by it shall revert to the range of goods and form of retailing permitted under the terms of the existing planning permission.

2. The designated area referred to in 1 above shall only be used as a coffee shop, serving coffee, other hot and cold drinks, sandwiches and other light refreshments for consumption on the premises and for no other purpose including any other purpose within Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order, 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

The Supplementary Retail Statement submitted with the application states that the mezzanine floor is used for the sale of furniture, lighting, recreational and camping goods, the ancillary cafe and storage. It states that the applicant is

willing to accept a further condition limiting the net sales area of the mezzanine to 1,250 sq m (excluding the cafe).

A separate application has been submitted to insert the mezzanine, carry out external alterations to the building, reorganise the car park and install plant in the car park, following demolition of the greenhouse extension (ref. P/2014/0901/MPA).

The application has been implemented and is therefore now entirely retrospective.

Summary Of Consultation Responses

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: No comments.

Torbay Development Agency: No response.

Strategic Transportation: Initial comments stated £102,491 sustainable transport contribution required in accordance with Planning Contributions and Affordable Housing SPD based on net additional retail floorspace. The exact level of additional traffic and impact upon the highway network has not been clearly set out in the Transport Assessment, therefore unable to comment on whether or not the proposal is acceptable. The TA has undercounted trip generation and is not robust. Staff travel plan required.

Additional comments on P/2014/0901 (for the mezzanine floor) questioned validity of further technical information received. Traffic generation has calmed down since opening and travel patterns likely to revert to peaking at holiday times and peak weekends. No appropriate data provided for a recognised neutral time of year based on several stores instead of only one at Plymouth, which is in a different type of location. £102,491 contribution still required, including £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.

Community Safety: Recommend a condition to limit hours deliveries can be made to between 07:00 and 23:00 Monday to Friday, and between 07:00 and 13:00 on Saturdays to protect residential amenity from noise. (It is assumed the recommendation extends to no deliveries on Sundays and bank holidays.) Further comments on external lighting relate to P/2014/0901.

Waste: Unlikely to be any waste issues.

Summary Of Representations

None received.

Relevant Planning History

P/2014/0901/MPA: Construction of additional car parking following demolition of garden centre (retrospective), provision of two water tanks and a pump house, and insertion of mezzanine floor and exterior doors in existing building. (Revised description): Pending consideration.

P/2012/1124/VC: Variation of Condition 3 to enable deliveries to take place between 7am and 11 pm on Mondays-Saturdays and 8am to 6pm on Sundays and Bank Holidays and the removal of Condition 5 pursuant to planning permission reference 83.353 allowing the sale of all goods within Use Class A1, thereby allowing the premises to be used as a supermarket.: Refused 28.01.2013 (Appeal dismissed 15.01.2014)

P/2012/1123/MPA: Alterations to the building associated with its conversion to a supermarket and extension to the internal mezzanine floor by 282 sqm for ancillary plant and offices [non sales area]; together with new hard and soft landscaping, car park layout and site access arrangements (following demolition of greenhouse extensions, 297 sqm).: Refused 15.01.2013 (Appeal dismissed 15.01.2014)

ZP/2011/0698: Change of use and refurbishment of existing vacant unit to provide a food store of approx 3,500sqm with 175 car parking spaces (pre-application enquiry):

ZP/2008/0267: Extensions To Site And Use As A Supermarket (pre-application enquiry): Approve 01.04.2008

P/2005/1102/AD: Illuminated/Non Illuminated Signs: Approved 11.08.2005

99/1415/PA: Variation of condition 5 of application 83.353 to allow the sale of pets, pet food and pet products: Approved 15.11.1999

98/0470/PA: Change of use from DIY superstore to a store for the sale of furniture, carpets, beds and soft furnishings: Approved 30.04.1998

98/0140/PA: Variation of conditions 3 & 5 of application 83.353, to allow use of store as a food supermarket, including alterations and changes to form additional car parking and servicing areas: Refused 15.01.1999

83.2843: Erection of greenhouse Extension, Walls Hill Quarry, 250 Babbacombe Road, Torquay: Approved 17/02.1984

83.353: Erection of D.I.Y. Home and Garden Centre, with ancillary parking and service areas, Walls Hill Quarry, Babbacombe Road, Torquay: Approved 23.09.1983

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Relaxation of Use on Town Centre Vitality and Viability
 2. Reuse of Vacant Building and Job Creation
 3. Impact on Local Highways
 4. Impact on Residential Amenity
-
1. The Principle of the Relaxation of Use on Town Centre Vitality and Viability

The site is in an out of centre location, therefore the sequential test must be applied. An impact assessment is also required as the floor area exceeds the default threshold of 2,500 sq m set in the NPPF; the threshold in the emerging Local Plan is 1,000 sq m, but this is not adopted policy. The variation of the condition will affect all the floor area in the building. The total floor area in the building prior to the installation of a mezzanine floor was 3,230 sq m. The total floor area in the building as existing after the installation of a mezzanine floor is 4,775 sq m. As can be seen, notwithstanding the outcome of the separate application to insert the mezzanine (ref. P/2014/0901), the total floor area will exceed the default threshold for an impact assessment.

With regards to the sequential test, the applicant had originally provided insufficient information in the Supporting Retail Statement to demonstrate compliance. This related to the issue of flexibility and the requirement to search for alternative sites across the whole of Torbay. Therefore, a Supplementary Retail Statement was submitted. The Council's retail consultant has reviewed this document and concluded that the application now passes the sequential test, subject to a condition to stop the sub-division of the retail store. If the application is approved, this condition should be added accordingly.

With regards to the impact test, again originally the applicant had provided insufficient information to demonstrate compliance. No information had been provided on the impact of the proposal on town centre investment, as required by the NPPF, and no evidence had been provided to back up the assertion that 77% of the turnover can take place under the current permission. Furthermore, the Council's retail consultant considered that limited weight could be placed on the impact assessment provided, as it was based on DIY goods shopping patterns only and did not reflect the full range of goods being sold by The Range. The retail consultant was also concerned that no information had been provided on the potential impacts of other retailers using the store should The Range vacate the premises.

The Council's retail consultant considers that limited additional information has been provided in the Supplementary Retail Statement to satisfy his previous

concerns. The additional information focuses on the difference in turnover of the previous and current uses, stating that there will only be an increase of £1.4m. However, the retail consultant considers that the total turnover of the proposal must be taken into account because the building had been vacant for a number of years. Furthermore, a significant proportion of the turnover is still attributed to DIY goods and gardening products (55%) and evidence of this is required before the retail consultant can complete his advice. For information, the total turnover in the SRS is £6.8m, with a predicted impact on Torquay town centre of 0.3% and the Willows of 0.4%.

The national planning practice guidance states:

"It is for the applicant to demonstrate compliance with the impact test in support of relevant applications. Failure to undertake an impact test could in itself constitute a reason for refusing permission."

As the applicant has failed to undertake a robust impact assessment and in particular no assessment of town centre investment, given the length of time that has already been given to the applicant to complete this it is considered that the application should be refused at the current time in accordance with national guidance, and enforcement action taken to cease the current use. However, if Members consider that it is unlikely that the proposal will have a significantly adverse impact on the centres in its catchment, in combination with other development proposals, based on the information received to date, then the positive and negative effects of the proposal need to be considered alongside all other material considerations. The positive effects are discussed under 2. below.

For information, the recently refused application for a supermarket to occupy the premises was dismissed at appeal due to failing the sequential test and the predicted adverse impact to the vitality and viability of St Marychurch District Centre and Babbacombe Local Centre. However, this differs from the current application as it sought permission for the sale of convenience goods rather than an expansion of the comparison goods that can be sold from the premises.

2. Reuse of Vacant Building and Job Creation

The proposal brings back into use a building which has been vacant for a number of years. A proportion of the goods sold are consistent with the extant permission to sell DIY goods and gardening products. A core principle of the NPPF is to encourage the effective use of land by reusing land that has previously been developed (brownfield) provided that it is not of high environmental value. Local Plan Policy EP6 also supports proposals for the development of derelict, vacant or underused sites where schemes result in their beneficial reuse. Therefore, the proposal has a positive impact in this regard.

The Planning, Sustainability and Waste Management Statement submitted states

that the proposal will create 124 FTE jobs. It is unknown how many people are currently employed at The Range and an update will be provided at committee. Securing economic growth in order to create jobs and prosperity is consistent with the NPPF (paragraph 18) and emerging local policy.

The above benefits are material considerations that must be weighed in the overall planning balance of the application. If Members consider them to take higher priority than the uncertainty over the impact of the proposal on town centre vitality and viability, then they may wish to approve the application. In this case, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be re required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

1. Restrictive goods condition
 2. Stop sub-division of the store
 3. Define maximum net sales area and maximum area for ancillary cafe
 4. No independently operated concessions
 5. Hours of delivery
 6. Staff Travel Plan
 7. Waste Management Plan
-
3. Impact on Local Highways

As described under the Summary of Consultation Responses above, the Transport Assessment submitted with the application was considered by Strategic Transport officers to not be robust. The applicant submitted further technical information to demonstrate that the proposal will not result in additional trips, but Strategic Transport officers consider the robustness of this additional information to still be questionable.

However, following observation of the store operating on week days, Strategic Transport officers consider the proposal to be acceptable, subject to payment of a £102,491 financial contribution in order to: implement parking restrictions on local roads; carry out highway safety works to the junction at Babbacombe Road, St Anne's Road and Babbacombe Downs Road; and carry out sustainable transport enhancements in the area. The contribution is based on the net additional floor area of the proposal and associated trip generation.

The contribution will need to be secured in a s106 agreement. As the contribution has been calculated on the basis of the net increase in floor area of inserting the mezzanine, it is considered that the agreement should be tied to the concurrent application ref. P/2014/0901. However, legal advice will be sought on whether it should be tied to this application too.

A condition to secure a Staff Travel Plan within three months of the date of decision is also required. Subject to these provisions, the proposal is considered to be acceptable and in accordance with Local Plan Policies TS, T1, T2 and T26.

4. Impact on Residential Amenity

Community Safety officers have recommended a condition to limit the hours of delivery to between 07:00 and 23:00 Monday to Friday, and 07:00 and 13:00 on Saturdays in order to reduce disturbance to local residents. The condition should also prevent deliveries taking place on Sundays and bank holidays. Subject to this condition, the application accords with Local Plan Policies EPS and EP4.

S106/CIL -

A financial contribution of £102,491 is required towards the following:

- o £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.
- o £33,491 to alter radius kerbs and islands at Babbacombe Road/St Anne's Road/Babbacombe Downs Road junction in the interests of pedestrian safety.
- o £6,500 for bus shelter on northbound side of Babbacombe Road near the store in the interests of promoting sustainable modes of travel.
- o £60,000 for a shared pedestrian cycleway along Babbacombe Road linking St Anne's Road and Asheldon Road in the interests of promoting sustainable modes of travel.

Justifications

The contributions towards highway works are justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6 and T26.

The contributions toward sustainable transport measures are justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6, T1 and T2, and paragraph 32 of the NPPF.

Status

The applicant has not yet confirmed whether they agree to pay the above s106 contributions. Therefore, heads of terms have yet to be agreed and instructions have not been sent to Legal Services to start preparation of the s106 agreement. An update will be provided verbally at committee. Legal services will be consulted on whether the agreement should be tied to this application, as well as P/2014/0901.

Conclusions

In conclusion, as the applicant has failed to undertake a robust impact assessment and in particular no assessment of town centre investment, it is considered that the application should be refused in accordance with national planning practice guidance. The application was submitted almost six months ago and an extended period of time has been given to the applicant to address this. Members should be aware that if they decide to refuse the application, the implication of this decision is that enforcement action should be taken to cease the current use.

However, if Members consider that it is unlikely that the proposal will have a significantly adverse impact on town centre vitality and viability based on the information received to date, and the positive benefits of the scheme of reuse of the previously vacant building and job creation are sufficiently high priorities in the overall planning balance, then they may wish to approve the application. In this case, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be re required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

1. Restrictive goods condition
2. Stop sub-division of the store
3. Define maximum net sales area and maximum area for ancillary cafe
4. No independently operated concessions
5. Hours of delivery
6. Staff Travel Plan
7. Waste Management Plan

Condition(s)/Reason(s)

01. The applicant has failed to demonstrate in a suitably robust impact assessment that the development as varied will not have a significant adverse impact on investment in the centres in the catchment area of the proposal, or on town centre vitality and viability. The proposal is therefore contrary to saved Policies SS and S6 of the Adopted Torbay Local Plan 1995-2011 and paragraph 26 of the NPPF. Furthermore, national planning practice guidance states that it is up to the applicant to demonstrate compliance with the impact test and failure to undertake an impact test could in itself constitute a reason for refusing permission.

Relevant Policies

SS - Shopping strategy

S6 - Retail development outside identified To

CF6 - Community infrastructure contributions

W7 - Development and waste recycling facilities
EP6 - Derelict and under-used land
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T26 - Access from development onto the highway
NPPF - National Planning Policy Framework

Agenda Item 11

Application Number

P/2014/0965

Site Address

Former Royal Garage Site
4-24 Torwood Street
Torquay
Devon
TQ1 1EB

Case Officer

Mrs Helen Addison

Ward

Wellswood

Description

Mixed use development of hotel, 1 No A1 unit, 3 No A3 units, 3 No B1 office use units and 1 No B1 office use or D1 gym use unit at former Royal Garage site, involving the demolition of property Nos 4-24 Torwood Street, Torquay

Executive Summary/Key Outcomes

This application is a revision of a previous scheme for redevelopment of this town centre site that was granted planning permission under application reference P/2011/0035.

The application is submitted for demolition of all buildings on the site and construction of an eight storey building to be used as;

- 1 x A1 retail unit
- 3 x A3 restaurant units
- 4 x B1 office or alternatively 3 x B1 office and 1 x D1 gym unit
- 131 bedroom hotel

The proposed development has been revised in order to improve its viability. The layout of the building has been simplified so that uses are not split between floors. The height of the frontage to Torwood Street has been increased by 2.3 metres and the previously approved set back to The Terrace at the 7th and 8th floors has been omitted. The provision of a new footpath linking Torwood Street to the Terrace has been deleted to increase the size of the building and remove the need to create a facade to the side of the building. The design of the Torwood Street elevation has been revised.

The Design Review Panel has supported the principle of the revised scheme. English Heritage objected to the originally submitted plans on the basis that the development failed to respond to the streetscape in Torwood Street, and consequently would result in harm to the Torquay Harbour Conservation Area.

Revised drawings were submitted which included deletion of 4 hotel bedrooms to address English Heritage requirements. In response to these revisions English Heritage has advised that the revised scheme does not sufficiently address the prominence of the third floor, which has a looming quality over the streetscape. It is suggested that the scheme would further benefit from setting the central section of the development (mainly the third floor) back into the site, providing it with a recessive quality and a greater sense of the terraced character of the conservation area. Similarly it is also noted that on the Torwood Street elevation the upper storeys of the building no longer have a recessive quality and therefore EH again have concerns about the potential looming quality to the building. It is suggested that further modification to the design could be undertaken to help reduce the overall impact.

The scale of the proposed development would result in some harm to the character and appearance of the Torquay Harbour Conservation Area. The NPPF advises that strong countervailing factors should be identified before harm to a heritage asset can be overridden. Any harm or loss to a heritage asset should require clear and convincing justification.

The proposed development would deliver significant investment in Torbay. It would provide a minimum of 2450m² of new office floor space and a 131 bedroom hotel, both of which would create new employment opportunities. This scale of investment would present a significant economic regeneration opportunity within the town centre. The principle of redevelopment of the site would be consistent with the saved adopted Torbay Local Plan 1995-2011. The development has been estimated by the applicant as providing between 300-410 FTEs, £14M construction investment, £40M of total economic activity and a minimum of £2.8M hotel visitor spend.

The applicant has advised that further modifications to the proposed development as recommended by English Heritage would make the scheme unviable. In order to be confident that the proposal would provide a level of public benefit that would over-ride the effect of the development on the Torquay Harbour Conservation Area, for example through providing a significant regeneration opportunity within a prominent location in the town centre and redevelopment of a site that has been considered an eyesore for many years, the applicant has submitted a viability assessment to justify that any further modification would impact the viability of the scheme. The suggested modifications by English Heritage would result in a loss of 10 bedrooms to the hotel. On this basis the viability assessment submitted by the applicant indicates that the development proposal would not be viable.

The impact of the development on the Torquay Harbour Conservation Area has to be weighed against the investment and regeneration opportunity that this proposal presents. There is a fine balance in this consideration, particularly in the light of English Heritage's comments. Having considered the scale of

investment that would be generated by this scheme and the prominent location of the site within the town centre, on the basis that the Design Review Panel supported the principle of the current proposal, providing the TDA's review of the viability assessment supports the applicants case that it would not be viable to modify the scheme, it is considered that the substantial public benefits in this case would be sufficient to override the impact of the proposal on the heritage assets.

Recommendation

Subject to receipt of confirmation from the TDA that the viability assessment submitted by the applicant does demonstrate that acceptance of modifications proposed by English Heritage would render the proposed development unviable; Conditional approval; subject to the signing of a s106 legal agreement in terms acceptable to the Director of Place, within 6 months of the date of this committee or the application be reconsidered in full by the committee, conditions are listed at the end of this report, however final drafting and determination of appropriate planning conditions to be delegated to the Director of Place.

Statutory Determination Period

The thirteen week target date for determination of the application was 7th January 2015. The application has been delayed because the design has been revised following an objection to the application from English Heritage and the applicant was requested to submit further information in support of the proposed development.

Update

Members considered the application at their meeting on 12th January 2015, it was deferred in order to report additional information on the relationship of the proposal with the Building Heights Strategy and for the submission of a viability assessment.

The relationship of the proposal with the Building Heights Strategy

Members will be aware that the Building Heights Strategy was commissioned by the TDA. It should be noted that the report carries limited weight as it is an evidence based document supporting the Torbay Local Plan 1995-2011 and does not constitute Council policy.

In the strategy a 'tall building' is defined in the strategy as "any building that is significantly taller than the prevailing height."

Within the document there is a plan which identifies the Town Centre, including Torwood Street as an 'Area of Search' where tall buildings are considered to be appropriate in principle, subject to a set of considerations. It sets out three main objectives for Torquay Town Centre;

- to reinforce the character of fine-grained 3 storey buildings and a varied

- roofscape
- to promote vibrancy and vitality of the town centre through a flexible approach to building height
- to reinforce Torquay's role as the primary centre in Torbay.

The proposed development has sought to integrate into the fine-grained character of the conservation area, particularly along the Torwood Street frontage. Revisions have been made to the submitted scheme to meet this objective. The building elements do exceed three storeys. In the Strategy it is recommended that an additional storey could be acceptable within this location.

In the Strategy it is noted "there will be occasions when a tall building might be justified because of the benefits it brings to the community at large, notwithstanding reservations which might apply in relations to its aesthetic or environmental impact on a particular area or view. Examples might include where a tall building will be a talisman for inward investment and regeneration acting as a catalyst for revitalising and rejuvenating a place".

The acceptability of a tall building within a certain area turns on a number of key considerations such as the impact on views, whether the development breaches the sky line and how it responds to the topography of the area. The view of Torquay harbour is analysed within the strategy. It refers to the backdrop of the view being tree covered slopes loosely developed with medium scale development. It identifies that this view is sensitive to tall buildings which could harm the balance of the view, particularly in the foregrounds, on hill tops or where it would break the sky line. The design of the proposal has come forward as a response to similar analysis of how the site fits within its context. This has resulted in the breaking up of the building into different elements which would reduce the height of the proposal when viewed from key vantage points around the harbour area.

The criteria for assessing a tall building are similar to those which have been used in assessing the proposal. These are its location, conservation, views, topography, design, public realm, streetscape, microclimate, amenity, land use and sustainability.

In summary, the Building Heights Strategy does not constitute Council Policy and therefore has limited weight. The application site is within the area of search, where tall buildings can have acknowledged benefits by way of regeneration and vitality. The strategy permits tall buildings where they meet the criteria set out above.

Viability Assessment

The applicant has submitted a viability assessment that predicts the scheme (as applied for) would result in a loss for the developer. The modifications requested by English Heritage would result in deletion of 10 hotel bedrooms from

the scheme which would result in an unacceptable scale of loss to the developer. The viability assessment will be reviewed by the TDA prior to the meeting.

The applicant has advised that the effect of the loss of 10 bedrooms on the local economy would be as follows;

- Assuming occupancy of 1 person per room and 85% occupancy a loss of £276,122 per annum
- Assuming occupancy of 1 person per room and 65% occupancy a loss of £211,152 per annum
- Assuming occupancy of 2 persons per room and 79% occupancy a loss of £513,263 per annum.

The TDA has been asked to review the viability assessment and confirm whether it is (i) realistic and (ii) demonstrates that the modifications recommended by English Heritage would make the scheme unviable.

Site Details

The site comprises the frontage buildings of 4 – 24 Torwood Street and includes the land to the rear of these buildings, which has until recently been used as a car park. It is bound to the south by Torwood Street and to the north by a concrete faced rock wall of approximately 10m in height beyond which is The Terrace at a notably higher level. To the west of the site is a public right of way which provides pedestrian access between the two roads. The car park originally provided stabling and garaging for the former Royal Hotel which is to the west of the application site. There is an existing vehicular access onto Torwood Street between building numbers 16 and 22. None of the former stables and garages remain on the site. The site area is approximately 0.23ha.

In terms of constraints; the site is within the Torquay Harbour Conservation Area. The Torquay Harbour Area Character Appraisal identifies most of the buildings on the site as key buildings within the conservation area with largely unspoilt frontages. Within the Local Plan the frontage buildings are identified as being within a Secondary Shopping Frontage. Most of the site is allocated for mixed use development in the Torbay Local Plan 1995-2011 and is subject to policies S2 TM4, E1.10 and S5.2 which promote mixed use development. This includes retail, leisure, employment and residential uses. Torwood Street is shown as being part of the major road network.

The buildings on the site have been closed and boarded up for several years. The most recent uses of the buildings were referred to under the previous planning application reference P/2011/0035MPA as follows:

- 4 Torwood Street – “Tictocs’n’rocks” – Retail
- 6 Torwood Street – “Devon Kebab House” – Takeaway
- 8 Torwood Street – “Trents” – Bar

10 Torwood Street – “Legends” – Restaurant
12 – 16 Torwood Street – “Brights of Nettlebed” – Retail
22 Torwood Street – “Wild Jacks” – Takeaway
24 Torwood Street – “The Gold Shop” - Retail

The site is in a prominent location in the town centre, and is located close to the harbour and the clock tower which is a notable land mark. The surrounding area is largely in commercial use with a number of shops, cafes, take aways, night clubs and offices in the area. There are also residential flats within the vicinity of the site, some of the closest being to the west and to the south at the former Queens Hotel. The Terrace car park is to the north of the site. The site is within an area that has a vibrant night time economy due to the proximity to nightclubs and takeaways.

The site is visible in long distance views from the harbour, Torwood Street to the east and west and from Montpellier Road to the north.

Detailed Proposals

This application is principally a revision of a scheme that has been previously been approved by the Council under application references P/2009/0690 and P/2011/0035.

The application is for demolition of all the existing buildings on the site that comprises numbers 4 to 24 Torwood Street, and subsequent redevelopment. The proposed redevelopment would comprise construction of an eight storey building (the 6th to 8th floors would be set back towards The Terrace) that would be used for;

3 x A3 restaurant units
1 x A1 retail unit
3 x office units
1 x office unit with an alternative possible use as a gym
131 bedroom hotel

Access to the proposed building would be from both Torwood Street and The Terrace. No off street car parking provision would be provided in the development.

Since the application was submitted the design has been revised in the light of the DRP comments and the objection from English Heritage. As part of this revision four hotel bedrooms have been deleted from the proposal to reduce the height of the building fronting Torwood Street. The elevation treatment to Torwood Street, The Terrace and the west elevation have all been revised. The revised proposals were re-advertised on 11th December.

A summary of the mix of uses in the previous and proposed application is;

P/2009/0690 P/2011/0035 P/2014/0965

12 flats	14 flats	
80 bedroom hotel	113 bedroom hotel	131 bedroom hotel
1 x retail unit	1 x retail unit	1 x retail unit
3 x restaurant	3 x restaurant	3 x restaurant
6 screen cinema	office	3 x offices
	gym	1 x office/gym

In comparison with the most recent application that was granted planning permission in 2012 (P/2011/0035) the main changes in this proposal are;

- The number of hotel bedrooms has increased
- The residential units and on site parking have been deleted
- The office floor space has been increased from 294m² to 4690m²
- The footpath proposed between Torwood Street and The Terrace has been deleted.

These revisions have resulted in proposed changes to the external appearance of the building, notably an increase in the height of the southern elevation facing Torwood Street by 2.3 metres and a reduction in the set back of the upper floors facing The Terrace. There have also been revisions to the design of the building.

In detail the application would comprise the following development;

Ground floor level Three A3 (restaurants and cafes) units with floor areas of 273m², 336m² and 247m² and one A1 (shops) unit with a floor area of 360m². An entrance to the hotel and offices above would be provided at this level comprising a staircase and lift.

First floor level An office with a floor area of 1024 m² and a second office that that applicant has also requested an alternative consent for this unit as a gym, with a floor area of 403m². A number of plant units, an office lobby and toilets are also proposed. There would be a fire escape to the footpath on the western side of the building.

Second floor level Two offices are proposed with floor areas of 1115m² and 305m². They would be accessed either from the entrance onto Torwood Street or from The Terrace. An office lobby, toilets and hotel plant rooms are also proposed.

Third floor level The main entrance to the hotel and offices would be from The Terrace at this level. This floor of the hotel would provide the public facilities; reception, meeting and working areas, breakfast area, toilets and delivery entrance. There would be a number of bedrooms laid out either side of an internal corridor. Within the centre of the building a courtyard would be

formed with rooflights to the offices below. It is not proposed that the courtyard area would be used by hotel guests.

Fourth floor level The building line to Torwood Street would be recessed at this level. Hotel rooms on either side of an internal corridor around the central courtyard would be provided. A fitness room and hotel plant is also proposed.

Fifth floor level From this floor upwards the accommodation is only provided within the rear section of the building which faces onto the terrace. Hotel bedrooms, circulation space and a linen store are proposed.

Sixth floor level Hotel bedrooms, circulation space and a linen store are proposed.

Seventh floor level Hotel bedrooms, circulation space, a linen store and a plant room are proposed.

Roof level Solar panels, a lift over run and a service riser are proposed.

The proposed development would comprise a three storey elevation facing Torwood Street with a recessed fourth storey, and the fifth to seventh storeys further recessed to the rear of the site. In the design and access statement it is advised that the elevation treatment to Torwood Street would comprise

“a contemporary interpretation of local building types, and it is proposed their cleaner detailing is lifted through the choice of high quality finishes. The elevation reflects the building uses- the larger offices with their tall ceiling heights and need for good levels of daylight – create a scale of façade that reflects the grand Scala building opposite. This grandeur is further enforced by the use of Permian sandstone – a locally distinctive material seen elsewhere on the harbourside”.

The design of the building facing Torwood Street would consist of a larger central element finished in sandstone, with a glazed link to rendered end piece on the east side of the building and a contrasting end piece on the west side finished in ball clay brickwork. The design and access statement advises that “this articulation helps reduce the apparent scale of the proposals- acknowledging the finer grain of development further east along Torwood Street”.

It is intended that the hotel bedrooms which are set back from Torwood Street and would be visible above the commercial building would be treated as roofscape. The third floor would be finished in an aluminium curtain walling system with glazed and infill spandrel panels.

The height of the elevation to Torwood Street would be 2.3 metres higher than the previous building approved under application reference P/2011/0035MPA.

The north elevation fronting Torwood Street would have an acrylic rendered façade with a roof over. There would be vertically proportioned windows with inset sandstone panels. The agent has advised that the intention is to respond to the materiality of the adjacent Terrace and to emphasis vertical proportions. Setbacks are proposed at either end of the third floor to create the impression of an inset roof structure.

In the south elevation facing The Terrace under the previous consent (P/2011/0035) the seventh floor of the building was set back. Under the current proposal it would be on the same building line as the floors below. Although it should be noted that the ends of the building would be inset. It is advised that this is because a setback would result in inefficiencies on the hotel requirements.

There is no car parking proposed on the application site. The site is adjacent to the Terrace car park and the applicant advises that parking will be provided in this car park.

It will be seen from the relevant planning history below that this is the third scheme for redevelopment of the site submitted since 2010. In the Design and Access statement it is advised that the previously approved scheme (P/2011/0035 refers) was not implemented principally due to viability issues arising from changing market conditions. This fresh application involves further use and design requirements that are needed to achieve viability.

In support of the application the following technical reports have been submitted; transportation assessment, travel plan, archaeological assessment, environmental noise survey, feasibility report (structural options), flood risk assessment, geotechnical and environmental report and planning statement, statement of community involvement, design and access statement, settings assessment, visual assessment, and scheme appraisal (viability)

Summary Of Consultation Responses

South West Water No objection subject to the development being undertaken in accordance with the details submitted within the flood risk assessment.

Senior Historic Environment Officer- (a) advises a robust statement of justification is required to address the demolition of all the frontage buildings which are recognised as key buildings in the Torquay Harbour Conservation Area Appraisal, and (b) in respect of the archaeological potential of the site an evaluation of those areas not known to be terraced or cellared ought to be undertaken in advance of determination.

Environment Agency No objection subject to the need for further investigation and assessment of the contamination identified in the submitted Phase 1 Desk Study and Phase 2 Geotechnical and Environmental Investigation

report. Advises that this can be carried out post demolition. Recommends two conditions to address contamination. With regard to flood risk assessment recommends the EA best practice guidance on surface water management.

Highways: No objection provided the following issues relating to proposed loading bays and access arrangements on the highway can be overcome by the applicant:

- The Terrace The proposal for both a loading bay and a lay-by is not acceptable. The lay-by being designated as a loading bay to assume both functions would be acceptable. A traffic regulation order for both sides of the Terrace between Montpellier Road and Torwood Street will be required to ensure against unauthorised parking/loading.
- Pedestrian crossing access must be facilitated on the desire line between the public right of way adjacent to the site and the harbour car park through provision of crossing points built out across Montpellier Road. Tactile paving and dropped curves will be required.
- Tracking must be provided for 70 seat coaches and refuse vehicles around all corners of the one way system to show it is achievable.
- Torwood Street- 4 metered parking spaces must be provided along with any loading bay that should be located at the furthest point up Torwood Street in front of the proposed site. This loading bay should be designated as coach parking between 10.00 and 20.00 and loading at other times, all days.
- No footway narrowing is acceptable.
- The cycle stands should be relocated to the shop side of the road and integrated into an improved street scene.
- A similar street scene to that in Higher Union street is required and in keeping with Victoria Parade , including granite paving on the footway all adjacent to the site and down to the existing zebra crossing.
- Public Right of Way connecting Torwood Street to the Terrace – notes the proposal includes improved lighting. This route must be upgraded with CCTV at either end, new surfacing in keeping with the granite paving referred to above and visual attraction improvement.
- Harbour Car Park- contrary to the Transport Assessment this car park does reach capacity at peak summer periods. VMS signing will need to be upgraded and positioned to ensure all traffic receives quality information sufficiently in advance to ensure they can find appropriate

parking spaces.

- Traffic Regulation Orders – will be required for all loading/coach bays and this will be the subject to the usual form of public and Member consultation. There is no certainty that these can be provided until the due process has been completed, typically 17 weeks. The cost of the TRO and associated works will be in the region of £4,650.

S106 Requests a contribution of £182,166

Travel Plan Implementation by individual occupiers as a requirement of lease terms must be secured by condition.

Police Architectural Liaison Officer It is disappointing that no reference to designing out crime or whether any crime prevention methods have been considered is made in the design and access statement. Advises that one entrance into the hotel is preferred, if this is not possible it is imperative there will be some form of strict access and control system to prevent non residents and those with criminal intent being able to access staff areas, the fitness centre, offices or corridors where guest bedrooms are located. There should be clear signage to the hotel reception from all parts of the hotel. All pedestrian accesses will need to be well defined and overlooked.

Environmental Health Officer Requires the kitchen extraction equipment to be designed in the appropriate manner. Suggests a condition should be imposed to address this issue.

English Heritage We are disappointed that the current application has failed to address the distinct character and appearance of the conservation area, in terms of scale and massing and the treatment of the Torwood street façade. We have identified this will cause significant harm to the conservation area and English Heritage is unable to support the proposal. Raises concerns about (a) the height of the building and considers it will create an overly prominent element within the distinct horizontal emphasis of the town, and (b) the treatment of the Torwood Street facade due to the lack of response to the vertical rhythm of the streetscape.

Drainage Requires details of the surface water drainage system. Recommends the developer includes flood resilience measures within the development to a level of 5.3m. A flood management plan should be produced before occupation of the buildings.

Senior Engineer No comments to make.

Summary Of Representations

A number of objections to the development have been received. The following points have been raised;

- This area retains traditional Victorian buildings. It is a key part of the town and should be preserved not destroyed.
- This type of development is totally unsympathetic and unsuitable in every way.
- It is too big, shows no respect for the local vernacular and will destroy the street scene.
- This does set the precedence for the ongoing loss of key buildings in Torquay.
- The new building looks great but should not be built here among other historic buildings.
- The building looks out of place and so more time should be spent matching it and bedding it in with the surrounding buildings.
- My reservation is towards the overall height of the development
- The plans show an unattractive utilitarian building, incongruous in size and appearance to its surroundings
- I would hope for a more sympathetic development on a smaller scale and designed to work with rather than against the natural landscape of this beautiful bay.
- From the harbour people will see a huge building very high, very long blocking most of the hillside.
- The size and scale of this building is completely inappropriate for the area being too overbearing and far too tall.
- The latest planning submission shows increased height and hotel bedroom windows which look directly into my windows including my bedroom.
- The increased height of the building will cause me loss of light, together with loss of privacy and also a loss of approximately 1/3 of the property value.
- The previous permissions cannot carry any weight in the decision making

- process given the applicants admission that the schemes are unviable.
- The applicant should submit a viability study for this site in the context of explaining that it is available and deliverable.
 - There are significant changes to the scheme notably (a) an increase in the scale of development on the site through an increase in the height of the buildings fronting Torwood street and (b) through the loss of the passageway running from The Terrace to Torwood Street on the eastern side of the site.
 - In reviewing the documents submitted with the application we have noted some significant deficiencies
 - Previous approvals do not mean there is an automatic assumption that permission should now be granted for the alternative scheme.
 - It is noted that under Policy S2 TM4 it states the site “is allocated primarily for retail purposes”.
 - The scheme should be refused as being contrary to the Development Plan.
 - The scheme has no car parking, this is a fundamental problem.
 - The loss of car parking offered by the site in its present state plus the proposed car parking provision to meet the needs of the development has not been adequately addressed in the Transport Assessment.
 - The proposed development will now be physically attached to 26 Torwood street and the scale of the buildings are such that they will dwarf this property.
 - No evidence has been submitted for the loss of the eastern pedestrian link which was a fundamental part of the previous application. No proper justification has been given for its loss.
 - The planning statement does not properly address the range of planning issues.
 - There are concerns with the Transport Statement
 - The Design and Access statement fails to properly address the design issues surrounding the scheme.
 - The scheme gives little attention to its impact on Torwood Street best

evidenced by the fact that the principal access to the hotel is to the Terrace.

- It is not clear from the application form as a whole what is being applied for.

Letters in support received which raise the following points;

- The buildings currently there are not the most attractive Victorian buildings.
- It will regenerate a run down part of Torquay in the same way that the successful Abbey Sands development has.
- Torquay needs this and other quality developments to happen if we are to compete against other coastal locations
- The new development will provide excellent new facilities for local residents as well as those visiting Torquay.
- It will remove the terrible eyesore of derelict and crumbling buildings
- Investment in Torquay town centre should be encouraged and this would be an excellent start.
- The appearance of that part of Torwood street at present is depressing and embarrassing for a major tourist resort.
- The regenerative effect of a suitable, mixed use development has the potential to give a boost to local businesses particularly in this part of Torquay.
- It will provide new jobs as well as adding to the overall improvement in that area of Torbay.

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

Various applications have been submitted in relation to the existing buildings on site including changes of use, minor alterations including shop-front alterations and signage.

Various applications were submitted in the 1980's as follows:

- P/1983/1792 Retail unit/multi-storey car park. Refused 4/6/1984
- P/1984/3237 84 Sheltered flats and wardens flat. Refused 29/1/1985
- P/1985/0361 49 flats. Refused 2/4/1985. Appeal dismissed 5/9/1985
- P/1986/2379 Erection of 43 sheltered flats plus wardens accommodation, offices and retail/storage space. Approved 25/9/1987

Subsequently an application for a certificate of lawfulness was submitted in 2005 in an attempt to prove that work had commenced on the scheme which was approved in 1987, thereby allowing the work to continue. The certificate of lawfulness application was refused on 6/3/2006 and subsequently dismissed at appeal on 22/08/2007.

- P/2009/0689 Demolition Works. Approved 06/07/2010
- P/2009/0690 Demolition of 4 – 24 Torwood Street. Redevelopment of site comprising 12 residential apartments with residential parking, 80 bedroom hotel and associated facilities, 6 screen cinema. 1 retail unit and 3 restaurants. Approved 6/1/11
- P/2011/0035MPA Demolition works; formation of mixed use development to form hotel, A3 units, 2 external purpose units (D2 use for fitness centre and B1 use for office suite) and 14 apartments with vehicular and pedestrian access, approved 11/5/12
- P/2011/0036CA Demolition works granted 12/5/11

Key Issues/Material Considerations

The main issues that are relevant to the determination of this application are the principle of the proposed development and planning policy, design, highways and transport, heritage, economy/regeneration and S106.

Principle and Planning Policy -

In the saved adopted Torbay Local Plan 1995-2011 the majority of the site is allocated for employment and retail uses. Numbers 24 and 24a Torwood street are not subject of this allocation.

The relevant policies in the saved adopted Torbay Local Plan 1995-2011 relating to the principle of development on the site are as follows;

Policy E1.10 is applicable to the site which proposes the development of the site

for employment purposes. It is stated in this Policy that “proposals for the use of allocated sites for non employment uses will be determined on the basis of Policy E6 (Retention of employment land and buildings)”. The site is also subject to Policy S5.2 which states that the site is proposed for new retail development. In the explanation to the Policy it is stated “a mixed retail and leisure scheme would contribute to the wider improvement of the harbour area”. Further details are contained in TM4 set out in Policy S2. The explanation to this Policy states the site is “allocated primarily for retail purposes. Any scheme should be well-related to the Secondary shopping frontage in Torwood Street. ...levels would allow significant use of upper floors for retail use, providing access to the Terrace. The harbour side location means that the site would also provide opportunities for the introduction of leisure uses. An element of office use would also be acceptable, particularly on upper level”.

The National Planning Policy Framework (NPPF) sets out the government’s planning policies and how these are expected to be applied. These policies are material to the determination of the application. At the heart of the NPPF is the ‘presumption in favour of sustainable development’ which is described as a golden thread running through decision taking. Three dimensions to sustainable development are identified which are economic, social and environmental. To achieve sustainable these objectives should be sought jointly and simultaneously. These three dimensions provide a useful framework against which to consider this proposal.

The policies in the NPPF that are relevant to the principle of the development on this site are;

Para.18 sets out the Government policy on building a strong, competitive economy. It advises the “Government is committed to securing economic growth in order to create jobs and prosperity”.

At para.19 it is stated; “significant weight should be placed on the need to support economic growth through the planning system”

Para. 21 states; “Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances”

Para. 22 is relevant to the proposal and states; “Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. 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 market signals and the relative need for different land uses to support sustainable local communities”.

Para. 23 states; “planning policies should be positive, promote competitive town centre environments”

It continues to advise local planning authorities should “recognise town centres as the heart of their communities and pursue policies to support their viability and vitality”.

The NPPF contains very little guidance relating to tourism with the only reference at para.28 which relates to the promotion of rural tourism which is not applicable in this case. In the glossary there is a list of main town centre uses which includes hotel facilities.

In March 2011, the Government published a tourism strategy for the UK which underlines the importance of tourism to the economy and to post-recession recovery, across the UK. The strategy acknowledges (at para 2.1) the importance of tourism across the UK, stating “tourism is an often underestimated but tremendously important sector of the UK's economy”

The NPPF was published on 27th March 2012 and is more up to date than the Torbay Local Plan 1995-2011. Where there is inconsistency between policies in the NPPF and the Torbay Local Plan 1995-2011 the policies in the NPPF carry greater weight in the decision making process.

The principle of redevelopment of the site would be consistent with Policies E1, S5 and TM4 in the Torbay Local Plan 1995-2011. These policies particularly promote use of the site for retail and employment purposes. Policy TM4 also recognises that the site would be appropriate in part for leisure use. The proposed development would deliver retail and restaurant uses at ground floor level which are appropriate uses within a secondary shopping centre and would contribute to the vitality and viability of the town centre. 2450m² of employment floor space will be provided with a further 400m² that would be used for employment or as a gym. This is consistent with Policy E1 in the Torbay Local Plan and through provision of new employment floorspace would support the creation of new jobs. Finally the provision of a hotel on the site would generate new employment opportunities on the site and would support the tourism industry which is identified in the explanation to Policy TUS in the Torbay Local Plan 1995-2011 as the “cornerstone of the economy of Torbay”.

A representation has been received suggesting that the proposed development does not accord with the Torbay Local Plan, specifically because the proposed uses are not consistent with the explanation to Policy S5.2 in the Torbay Local Plan 1995-2011, which refers to retail uses on the upper floors of the development. It is not accepted that the proposed development can be classed as being contrary to the Torbay Local Plan 1995-2011. The proposal would be consistent with Policies E1.10, S2, S5.2 and TM4 which promote mixed use development of the site. The explanation to Policy 5.2 is not intended to provide

a definite prescription of the uses in the development of the site but rather to provide guidance on what may be appropriate. The site is within the secondary shopping area rather than the primary shopping area therefore the retail importance of the location is lower. In addition guidance in the NPPF makes it clear that Local Authorities should take a flexible approach to development within town centres in order to encourage vitality and viability.

Design and Visual Appearance -

Para. 62 of the NPPF advises that Local Planning Authorities should have local design review arrangements in place, and that in assessing applications they should have regard to the recommendations from the design review panel. Therefore in determining this application weight should be attached to the recommendations of the Design Review Panel (DRP). A copy of their report is included with the representations for this application.

In principle the DRP are supportive of the proposed scheme. They note that there is much to commend in the handling of this difficult site. They advise that they have some concerns about the architectural expression but these are not considered to be major obstacles. The main points raised by the DRP are as follows;

We are pleased to see that the key urban design principles of the development have been maintained and remain sound. We are encouraged by the greater simplicity now achieved.

We do not think the loss of the new public footpath which was to connect Torwood Street to the Terrace presents a major deficit to the network of pedestrian routes in this part of Torquay.

An upgrade of the existing footpath could form part of a Section 106 agreement

Arrangements for the use of public parking spaces need to be confirmed with the Council

Consideration should be given of how the entrance door to the hotel and offices on Torwood Street might be signalled in the architectural expression.

The treatment of the ground floor elevation of the A1 unit should be reconsidered in terms of how it anchors the elevation to the street

At third floor level the western corner of the building should follow the alignment of the hotel element of the development

A lighter brighter approach should be adopted for the facade materials of the hotel.

Alternative strategies for detailing of the Torwood Street elevation would be worth pursuing to restore some of the visual interest of the earlier scheme.

Consideration should be given to utilising the internal court.

Large scale details should be submitted prior to the commencement of development.

English Heritage has raised an objection to the proposal as submitted. It considers that the proposal has failed to address the distinct character and appearance of the conservation area, in terms of scale and massing and the treatment of the Torwood Street facade. Concern is expressed about the increase in height of the building and the treatment of the facade to Torwood Street. Particularly identified is a lack of response to the vertical rhythm of the streetscape that helps to break up the facade and provide interest.

The above comments have necessitated the applicant to review and revise the design of the proposed development. A number of the requirements of the DRP have been addressed in the revised plans, including detailing of the building to Torwood Street and the Terrace. In response to the issue raised by English Heritage the detailing of the elevation to Torwood Street has been revised to provide an increased vertical emphasis, through a reduction in the central sandstone element of the building and introduction of a contrasting end element finished in ball clay brickwork.

In comparison with the previously approved scheme on the site there are a number of common elements in the design of the proposed building. Notably the sandstone central element in the Torwood Street elevation and the rendered elevation to the Terrace with inset glazed panels and sandstone detailing. The 'glazed box' treatment to the eastern end of the Torwood Street elevation has been omitted from the current proposal and replaced by a rendered elevation. In design terms this would have some impact on the quality of the proposal, but it is noted that the DRP were overall supportive of the design strategy of the proposed development.

The detailing of the scheme will be essential to its quality and success. It will be important that the windows and panel details are recessed in order to provide visual relief and clarity to the elevations. This was a point made by the DRP. A condition requiring detailed drawings to be submitted will be needed to address this.

A key issue to be considered is that this application includes an increase in the height of the elevation facing Torwood Street by 2.3 metres. In the planning statement it is advised that this is due to improvements in the efficiency of hotel bedrooms. The applicant has attempted to address this increase in height through the design of the building at third floor level. The architectural

expression is recessive with cut backs at both the eastern and western ends of the building to reduce the visual impact. English Heritage were of the opinion that this approach would not go far enough in relating to the existing setting of the site, in particular to the way in which the existing buildings are stepped up Torwood Street to reflect the topography. English Heritage advised that the design of the proposed building needed further consideration to address this issue, particularly at the western end of the building (which is at the lower end of Torwood Street and would be particularly visible in views from the Harbour along Torwood Street). This has prompted a further revision of the design whereby four bedrooms have been deleted from the hotel resulting in a cut back of the third floor at the western end of the building. This revision introduces a stepped element to the building and introduces articulation that reflects the character of the townscape in the area.

The second key change in the design of the current scheme is the deletion of a new footpath link between Torwood Street and The Terrace on the eastern side of the building. This change is for commercial reasons as it would increase the floorspace within the building, and would reduce the cost of the development. The owner of the adjoining property has submitted an objection to the deletion of the footpath.

The provision of a new footpath link would have provided a visual break between the proposed development and the adjoining property and it would have also improved pedestrian access between Torwood Street and the Terrace as the existing footpath to the west of the site is unattractive due to its proximity to servicing areas of adjoining buildings and having a bend which means that there is no direct line of sight. Due to the significant change in levels the new footpath would have necessitated the provision of steps and it would therefore have only been accessible for the able bodied.

There are three considerations relating to the deletion of the footpath from the proposal. These are (a) accessibility and permeability. As referred to above there is an existing footpath link adjacent to the western boundary of the site. Consequently there is already a link between Torwood Street and the Terrace, and it would be difficult to justify the principle of requiring a second footpath in such close proximity to the existing one in terms of purely permeability. (b) quality of the footpath to the western boundary. The existing footpath is unattractive and likely to be underused for the reasons given above. As part of this proposal the applicant has been requested to carry out improvements to the footpath. Improved signage, lighting, surfacing and introduction of cctv would increase its quality and therefore likely levels of use. If all these measures were carried out it would be difficult to substantiate a need for an additional footpath within the application site. (c) effect on trading of adjoining property. The proposed development would increase footfall in the area due to increased activity that would result from the new uses on the site. The offices and hotel would have direct access to Torwood Street. It is difficult to argue that the loss of

the footpath on the eastern side of the site would reduce the movement of users of the premises onto Torwood street to such an extent that it would be harmful to the vitality of the immediate surrounding area. Therefore on balance it is considered that the deletion of the footpath link from the proposal would be acceptable.

There are two additional relevant points worth noting in relation to deletion of the footpath; firstly the DRP were of the opinion that provision of a new footpath as part of the development was not needed and secondly the Council's recently published draft master plan (for consultation) for Torquay Town Centre includes an aim of strengthening the route between the Terrace car park and the harbour through redevelopment potential of the existing Debenhams building.

Highways -

In support of the application a Transport Assessment and travel plan have been submitted. No off street parking provision is proposed in the application. It is noted that under the previous proposal (P/2011/0035) 14 parking spaces were approved to serve the residential units proposed. As there is no residential development included in the current scheme the car parking provision has been deleted. Not providing on site parking within the development provides an opportunity to make effective use of this town centre site and to use the floor space for commercial uses instead.

Pedestrian access to the retail and restaurant units would be from Torwood Street. The main entrance to the hotel and offices would be from The Terrace with separate lobbies provided for each use. A secondary pedestrian access to these units with stairs and a lift is proposed from Torwood Street. Servicing would take place from both The Terrace and Torwood Street.

Plans accompanying the Transport Statement propose a loading bay on The Terrace for use by service vehicles to the hotel and office elements of the development.

Servicing for the retail and restaurant uses would be from Torwood Street. A coach and loading bay is proposed along Torwood Street. It is proposed that loading is to be permitted between 6 am and 10 am with coach parking between 10 am and 8pm.

Secure long stay cycle parking would be provided within the hotel, office, retail and restaurant uses for staff who wish to cycle. For staff working in the offices 23 cycle parking spaces would be provided within a dedicated cycle store adjacent to the main office entrance on the Terrace. Five secure cycle parking spaces for hotel staff would be accommodated within the back house area of the hotel adjacent to the proposed delivery entrance for the hotel accessed from The Terrace. A further seven secure cycle parking spaces are to be accommodated

at the rear of the retail/restaurant uses accessed from Torwood Street. Short stay cycle parking for a total of six cycles in the form of three Sheffield stands would be provided on the Terrace adjacent to the office entrance. A further three cycle stands for six cycles are proposed on Torwood Street to the eastern side of the development adjacent to the retail unit.

In the Transport Assessment the Harbour car park is identified immediately north of The Terrace. This car park has 533 parking spaces including nine disabled and ten parent and toddler bays. An analysis of parking information is carried out and it is concluded that the car park has spare capacity.

The Council's Senior Transport Planner has raised a number of concerns about the information submitted by the applicant and asked for a number of revisions to the proposal. These are identified in detail above (see consultations section). The applicant has been asked to address these matters. Revised information is awaited and will be reported verbally to Development Management Committee.

Included in an objection to the application is a highways technical note produced by Hydrock who are professional highway consultants. In this objection it is concluded that the submitted Transport Assessment does not provide the Council with a robust evidence base upon which to form a judgement as to the likely merits and effects of the application. A number of points are raised which include the following;

Unreliable baseline traffic flows, which do not accord with DfT guidance.

The TA contains no detailed analysis of the causes or possible solutions to pedestrian incidents

Inconsistency on proposed floor space between TA and application form

The HGV loading bay would be too narrow

It is unclear how the enforcement of the drop off bay could be achieved

The measures proposed to improve the existing footpath cannot mitigate against existing issues or overcome the requirement for a more direct, convenient and attractive route that was previously proposed on the eastern side of the development

The trip generation data that has been used may lead to an underestimation of trips from the office component of the development. The TA does not provide a definitive prediction of the development's trip generation.

No traffic model outputs have been appended to the TA.

The loss of Torwood Street parking has not been properly assessed

Inconsistency with key paragraphs of the NPPF.

In response to this the applicant has submitted an additional highways note.

The further information requested by the Senior Transport Planner is still awaited. The applicant and the Council's Senior Transport Planner have agreed in a meeting that one loading bay will be provided on The Terrace to be used for both loading and for hotel drop off. An informal crossing point on the Terrace would be provided. On Torwood Street subject to appropriate agreement by the Council it is proposed to widen the pavement to create space for outside seating outside the restaurants which would also be intended to enhance the appearance of the area through the provision of street furniture, public art and bike stands. This would mean that the four on street parking spaces adjacent to the site would be lost. A coach parking bay would also be provided on Torwood Street. Traffic Regulation Orders (TRO) would be needed on both The Terrace and Torwood Street for the proposed changes to the highway. Included in these would be a restriction on loading/stopping on other parts of the Terrace, specifically to deter parking by blue badge holders. The applicant would be required to meet the cost of these through the S106 agreement. It should be noted that there is no certainty that the TROs would be agreed by the Council.

Heritage -

The application site is located within the Torquay Harbour conservation area which is defined as a designated heritage asset in the NPPF. The nearest listed buildings to the site are the Scala building on the opposite side of Torwood Street, the building occupied by Pizza Express to the east of the site, the Clock Tower, The Terrace, and the Unity Church in Montpellier Road to the north east of the site. Listed buildings are also defined as designated heritage assets in the NPPF.

The existing buildings on the site are mainly early 19th century with numbers 22 and 24 dating from the 18th century. All are recognised as key buildings in the Torquay Harbour conservation area, in the conservation area appraisal.

The NPPF contains a strong presumption against granting planning permission for development which will harm heritage assets, requiring particularly strong countervailing factors to be identified before it can be treated as overridden.

Para 131 of the NPPF states that when determining planning applications "Local Planning Authorities should take account of;

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation

- The desirability of new development making a positive contribution to local character and distinctiveness.”

At para. 133 it is advised that “where a proposed development will lead to substantial harm to designated heritage asset consent should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss”.

Para 134 says “where a development proposal will lead to less than substantial harm to the significance of designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”.

Para. 136 says “Local Planning Authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.”

Policies BE5 and BE6 in the Torbay Local Plan are also relevant to the assessment of the proposed development in terms of heritage. Policy BE5 requires development within a conservation area to preserve or enhance the character or appearance of that area. Policy BE6 requires development proposals to have special regard to the desirability of preserving any listed building and its setting, or any features of special architectural or historic interest.

As required by the policies contained in the NPPF and the Torbay Local Plan 1995-2011 it is important to assess the effect of the development on the appearance and character of the Torquay Harbour conservation area and the listed buildings in the vicinity of the site. Both English Heritage (EH) and the Council’s conservation officer had serious concerns about the impact of the proposal as originally submitted on the character and appearance of the Torquay Harbour conservation area. EH concluded that the proposal would have “a harmful impact on the special character and appearance of the conservation area. We have not received sufficient justification in line with the requirements of the NPPF to substantiate this harm and therefore, will be unable to support the application and would recommend that the application be refused”.

English Heritage makes reference to paragraph 134 of the NPPF in the consultation response so it appears that that EH considers the level of harm in this case is ‘less than substantial’. This interpretation is supported by the fact that two previous planning applications for redevelopment on the site have been considered by and not objected to by English Heritage. In this case in order to assess the heritage impact of the proposal the harm has to be weighed against the public benefits of the proposal, including its optimum viable use.

If it was considered that the proposal would lead to substantial harm to the

designated heritage asset the level of public benefit would need to be assessed as 'substantial' in order to outweigh that harm or loss.

The applicant has submitted a settings assessment to support the application. In this report the principle heritage asset that is identified as being susceptible to settings impact by the proposed development is the Torquay Harbour Conservation Area. The report identifies that the Torquay Harbour Conservation Area is characterised by a variety of materials, designs and architectural forms and for this reason is capable of accepting change in the form of new developments which are sympathetic to the overall character of the area. It is noted that the most crucial component of the setting which is highlighted in the Council's conservation area appraisal is the physical, topographic setting and spatial layout of the area. Developments which alter or contradict this aspect of the asset's setting are likely to pose a greater degree of impact. The report concludes that while the proposed development will pose a visual change within the conservation area, this is a change that can be accommodated and have a beneficial effect.

This conclusion of the applicant's settings assessment is contrary to the initial views of English Heritage. The Council's conservation officer is in agreement with English Heritage, that the original submitted scheme would result in substantial harm to the Torquay Harbour Conservation Area. He considers that as revised the proposed development would lead to less than substantial harm. As required by para. 134 of the NPPF it is necessary to weigh this level of harm against the public benefits of the proposal.

The applicant's setting assessment makes reference to considering the designated heritage assets within the Torquay Harbour Conservation Area but does not refer to these assets. There are a number of listed buildings within the vicinity of the site that include the Scala building on the opposite side of Torwood Street, the building occupied by Pizza Express to the east of the site, the Clock Tower, The Terrace, and the Unity Church in Montpellier Road. It is also considered that the impact on the setting of Vaughan Parade and Delmonte in Rock Road is also material. The two listed buildings that would be most affected by the development are the Scala building opposite the site in Torwood Street and The Terrace on the northern side of the site. With regard to the Scala building it is important that the new elevations of the proposed development compliment the elongated form of this building. The long term vacancy of the rear of the application site is harmful to the setting of the Scala building as it is dilapidated and highly visible from this building. It is concluded that there would be harm to the setting of the Scala building but it would be less than substantial. The five storey hotel element of the proposal would have an impact on the setting of the Terrace. This is by reason of the scale of the proposed building and its siting approximately 10 metres from the listed terrace. It is considered that whilst there will be some harm it will be less than substantial. The impact of the proposed development on other listed buildings referred to above would also be

less than substantial.

As required by para. 134 of the NPPF it will be necessary for the heritage impact of the scheme to be considered against the public benefits of the proposal. The way that this should be considered is not to be addressed as a simple balancing exercise but to consider whether there is justification overriding the presumption in favour or preservation.

There would clearly be economic benefits to the town from the proposed development. It would provide a substantial investment in a prominent site within the town centre. Two floors of the building would be used for offices (one smaller office may be used as a gym) which would generate employment. It would also bring workers into the town centre who would be likely to use nearby shops and facilities. The 131 bedroom hotel would increase vitality in the town centre and would also provide employment opportunities.

Assessment of Viability and Public Benefits[e1] -

It is necessary, under the terms of the NPPF (p134) to consider development viability and the public benefits package associated with the proposed scheme and with the scheme that would meet English Heritage requirements.

Paragraph 134 of the NPPF requires the Local Planning Authority in cases such as this (e.g. where a development proposal 'would lead to less than substantial harm to the significance of a designated heritage asset') to weigh the harm caused against the public benefits of the proposal, including securing the optimum viable use of the heritage asset. [c2]

The planning history of the site indicates that the LPA is satisfied that an appropriately designed, substantial new building on this site would not harm the Conservation Area, however English Heritage are concerned that the current proposals exceed what would be acceptable on the site and have recommended that the building is reduced in size, resulting in the loss of 10 hotel bedrooms.

The applicant has indicated that the size of the current proposals are the minimum that is required to make redevelopment of the site financially viable.

The applicant has now submitted sufficient detail to allow an assessment of both the public benefit of the scheme and its financial viability.

The applicant has submitted the following information to support an assessment of the public benefits. It is broken down into economic, social and environmental benefits in line with para. 7 of the NPPF which identifies these as the three dimensions to sustainable development.

Economic

Total construction investment approx £14million

Total GDP increase £39.76m broken down into;

- Direct impacts (eg wage income) £14million
- Indirect impacts (eg supply chain) £15.26 million
- Induced impacts (eg increase in supply/demand in the wider economy) £10.5 million
- Tax benefits to the Treasury £7.84 million
- Construction jobs 148- 294 FTE
- Operational jobs either;

Between 348 -410 new jobs split as

- Hotel 44- 106 depending on operator
- Office (assume 2850 sq m) 238
- Restaurants 47
- Retail 19

Or Between 320 – 382 new jobs split as

- Hotel 44- 106 depending on operator
- Office (2,450 sq m) 204
- Gym (400 sq m) 6
- Restaurants 47
- Retail 19

Business rates tax receipt to Torbay Council

Increased spend – from hotel guests £2.8m -£3.7m per annum (assuming a range of 65- 85% occupancy) and from office employees arising from lunchtime

Social

Social benefits of new direct and indirect FTE employment

Supporting the vitality of the town centre and local visitor and other facilities through increased spend from hotel guests and office workers.

Environmental

Regenerating an underused and vacant town centre site.

Delivering a quality development that will contribute to the character and distinctiveness of the area.

Locating new development in a sustainable location.

The applicant has advised that the effect of the loss of 10 bedrooms on the local economy would be as follows;

- Assuming occupancy of 1 person per room and 85% occupancy a loss of £276,122 per annum
- Assuming occupancy of 1 person per room and 65% occupancy a loss of £211,152 per annum

- Assuming occupancy of 2 persons per room and 79% occupancy a loss of £513,263 per annum.

The applicant has advised that the proposal, if modified to meet English Heritage requirements, would not be viable and would not proceed if the development had to meet these requirements.

Para. 134 of the NPPF requires the assessment of public benefits to include securing the optimum viable use of the heritage asset. The proposal would result in the loss of the existing building, but will make effective use of the whole site, by significantly increasing the volume of development on the site.

In conclusion, the proposal would result in some harm to the Torquay Harbour conservation area and this has importance and carries weight in the planning balance. There will be public benefits from the significant level of investment that this proposal would generate and from the number of jobs that would be created. The economic regeneration in this location in Torquay would make a significant contribution to the viability town centre as it is in a prominent location.

Archaeology -

Policy BE9 in the Torbay Local Plan 1995-2011 states

“where development proposals may affect a site of archaeological potential, the applicant will be required to commission an archaeological assessment”

A historic building appraisal and rapid archaeological appraisal have been submitted in support of the application. This is an update of the archaeological appraisal that was submitted as part of the previous application, prepared in 2009. It advises that the significance of the buildings has been assessed, and they are considered to be a heritage asset of low significance, with this significance deriving from their evidential, historical and artistic values.

The Council’s archaeologist originally requested an evaluation of the buildings not previously entered to be submitted prior to the determination of the application. The updated report advises that the presence of asbestos has made access impossible. In the light of this it is recommended that a condition is requiring implementation of a programme of archaeological works, is imposed.

Demolition -

It is proposed that all of the buildings on the site would be demolished. Paras. 131 and 132 of the NPPF advise that great weight should be given to the conservation of a designated heritage asset and that clear and convincing justification should be required for any harm or loss. As part of this application as required by para.133 of the NPPF it must be demonstrated that the loss of the designated heritage is necessary to achieve substantial public benefits that

outweigh the harm or loss.

In support of the application a statement of justification for demolition has been submitted. This notes that despite attempts to develop schemes that retained varying amounts of the building group it has proved unviable to incorporate a meaningful amount of the existing structures.

The applicant has submitted as historic buildings appraisal that concludes the significance of the building are considered to be a heritage asses of low significance, with this significance deriving from their evidential, historical and artistic values.

A key consideration in deciding whether demolition of the existing buildings would be acceptable is the quality of the replacement scheme. As referred to above the proposal would deliver regeneration benefits within the town centre. As submitted English Heritage have concluded that the proposal is not appropriate in the conservation area and therefore the position has not yet been reached that demolition of the existing buildings meets the tests within the NPPF.

Impact on residential amenity -

A letter of objection has been received from the owner of a flat immediately to the west of the site. This is located on the opposite side of the footpath, approximated 5.5 metres from the proposed building. The principle windows to the living area, kitchen and bedroom in this flat face the application site. The proposed development would inevitably have an impact on the residential amenity of the occupier. This would be in terms of the proximity of the proposed building to the flat which would impact on the level of light to the flat, and the outlook from this property. This is a material consideration that has to be taken into account in determining the application.

In order to take this relationship into consideration the applicant has revised the west elevation of the building to include oriel (angled) windows to the hotel bedrooms facing this property on the third and fourth floors. In addition obscure glazing to the office windows is proposed at first and second floor level.

Land conditions -

In support of the application a Phase I desk study and Phase II Geotechnical and Environmental Investigation Report has been submitted. It is noted that this report was produced in 2010 and is based on a former development proposal on the site that included residential units. It is considered that the principles relating to land conditions will remain the same for the current proposal and therefore it is not necessary to request the report be updated. The Council's Senior Engineer has reviewed the and not raised any issues.

The report identifies that there is a substantial contiguous pile wall along the majority of the rear boundary of the site up to the Terrace as the higher level.

This retaining wall is anchored with reinforced concrete walling beams between the horizontal rows of anchors and blockwork facing, and was constructed in 1991. This new retaining wall forms most of the rear site boundary, with the exception of the western end where a much older cemented limestone retaining wall is present behind the soil mound. The Council engineer has advised that an inspection gap is required for maintenance of the retaining wall. A condition should be imposed to ensure that adequate consideration is included in the development for maintenance of stability of both the older masonry section of the highway retaining wall and the piled/anchored highway retaining wall.

With regard to contaminant levels on site, low levels were recorded and the site is considered to be of Low to Moderate Risk in respect of human health in relation to the proposed development. It is advised that

- Basic Radon protective measures are necessary during construction
- Further investigations will be required in an area of the site where levels of hydrocarbons were encountered in the groundwater.

Viability -

In an objection to the application the issue of viability is raised. Part of para. 173 in the NPPF is quoted which states “pursuing sustainable development requires careful attention to viability in plan making and decision taking”.

The objector notes that planning permission has been granted for two previous applications on the site neither of which has materialised. He suggests that the “previous permissions cannot carry any weight in the decision making process”.

In response to this point further reading of para.173 in the NPPF shows that it is not intended to require Local Planning Authorities (LPA) to consider the financial viability of every scheme before them, it requires LPAs to consider the cost requirements that it puts on development and ensure that they are not of such a scale that viability is threatened.

It is not accepted that the earlier permissions are not capable of being material considerations. In officer’s opinion it is for the Local Planning Authority as decision maker to decide what weight is appropriate to give to the earlier consents.

The applicant has submitted further information explaining the issues of viability affecting the previously approved scheme and clarifying how the current proposal responds to viability issues. These include the following;

- Improves usable/lettable floor area
- Simplifies party wall issues
- Removes facades
- Reduces extent of external works

- Deletion of residential element reduces impact on structure and simplifies the split of uses
- Efficient layout of guest rooms which would be of a standard size and layout
- Third floor no longer set back allowing a double loaded hotel corridor to be accommodated.
- Simplified mix of uses per floor
- Simplified structural layout
- Reduced complexity of fire separation between uses.

Drainage -

South West Water has raised no objection to the application provided it is undertaken in accordance with the submitted details. The Environment Agency has raised no objection subject to conditions relating to contamination.

The Council's Drainage officer supports the flood resistant and resilient construction measures that are proposed within the A3 units 01 and 02. He has raised no objection subject to conditions relating to detailed design of surface water drainage and the submission of a flood management plan.

S106/CIL -

Under application reference P/2011/0035 a Section 106 agreement was signed that included a contribution of £100,000 for sustainable transport. This was a lower contribution than would be required in accordance with the Council's SPD "Planning contributions and affordable housing". The applicant had submitted a viability assessment to justify a reduction in the level of contributions. Also included in the agreement were the following;

- A range of measures to ensure that the highway retaining wall at the back of the site would be properly maintained, during and after the development
- Measures to secure the provision of acceptable travel plans for the various uses on the site
- Careful removal and potential re-use of stone from the parapet wall
- A review of viability is the scheme was not complete within 3.5 years from the date of approval.

In respect of the current proposal based on the provision of new floor space to accord with the SPD "Planning contributions and affordable housing" the following sustainable transport contributions would be required;

£382,802 with 4 x B1 offices

or

£415,262 with 3 x B1 offices and 1x gym

In the SPD it is advised that mitigation should be applied for the creation of new employment on the site. Based on the levels of employment estimated by the applicant the mitigation would be

£857,690 with 4 x B1 offices

Or

£785,340 with 3 x B1 offices and 1x gym

It can be seen that the amount of mitigation for new employment created by the development will off set the requirement for payment of a sustainable transport contribution.

There are a number of works to the highway such as forming the loading bay on The Terrace, the coach parking bay on Torwood Street, works to the pavement on Torwood Street, improvements to the footpath and the traffic regulation orders that are directly related to the development and will be necessary to make the development acceptable in planning terms. The cost of these works is as follows;

- £4,650 for Traffic Regulation Orders for The Terrace and for Torwood Street to include loading / unloading controls, including signing and lining, parking provision and removal, coach parking
- £5000 for 2 Informal pedestrian crossing access points adjacent to the site to the Harbour car park across Montpellier Road west of the road up to the car park entrance – secured by S278 as enabling works
- Pavement widening as part of an improved street scene to help reduce pedestrian vehicle conflicts in the area adjacent to the site and down to the existing zebra crossing – estimated £80,000/£100,000 - secured by S278 as enabling works
- Public Right Of Way connecting Torwood Street to the Terrace - improve lighting, upgraded with CCTV at either end, new surfacing with granite paving and visual attraction improvement estimated - £30,000/£40,000 secured by S278 as enabling works
- Harbour Car Park reserved parking – subject to negotiations ongoing with parking direct secured by S278 as enabling works
- VMS signing for car parks estimated cost £15,000

The following items that were included in the previous S106 agreement should be included in the new agreement that will be required for this proposal;

- A range of measures to ensure that the highway retaining wall at the back of the site would be properly maintained, during and after the development

Conclusions

In conclusion, this proposal is effectively a revision to the development approved under application reference P/2011/0035. The main changes are the mix of development proposed (the residential element has been deleted in the current scheme), changes to the design of the building, the size of the building would be increased and the deletion of a new footpath link between Torwood Street and the Terrace. The principle of the development in this location would be consistent with policies in the Torbay Local Plan 1995-2011. The prominent location of the application site within the Torbay Harbour Conservation Area is a material consideration. Considerable negotiation has been carried out on the design of the building in order that it would not have an adverse impact on the appearance and character of the conservation area. The scheme has been revised since it was submitted which has included reducing the height of the building in the south west corner where the relationship with the adjoining buildings is most sensitive.

The proposed development would lead to some harm to the appearance and character of the Torquay Harbour Conservation area. In accordance with Section 12 of the NPPF strong countervailing factors need to be identified before granting planning permission for development that would harm a heritage asset. It is considered that this proposal would provide sufficient public benefits to justify the impact on the character of the area. The proposed development would result in considerable investment in the development and would provide an economic regeneration opportunity within the town centre. It would provide new employment, through the provision of a minimum of 2450m² of B1 office floor space. In addition the provision of a new 131 bedroom hotel within the town centre would make an important contribution to the tourist industry which is recognised as being the 'cornerstone of the economy of Torbay'. English Heritage has maintained their objection to the proposed development following submission of revised plans. It is their opinion that the third floor of the Torwood Street elevation would be prominent and would have a looming quality over the streetscape. They suggest that the third floor should be set back into the site. Similarly they consider that the upper storeys of the Terrace elevation should also be set back into the site. The applicant has advised that the further modifications requested by English Heritage would make the scheme unviable. A viability assessment has been submitted that supports this point. On balance subject to confirmation from the TDA that evidence to demonstrate the suggested revisions by English Heritage would result in the proposed development not being a viable proposal for this site, it is considered that the proposal would constitute an acceptable form of development

Condition(s)/Reason(s)

01. sound insulation
02. no demolition without contract for redevelopment
03. accord with flood risk assessment
04. finished floor levels

05. contamination scheme
06. control over hours of demolition and construction
07. operation of construction equipment
08. method of piling to be agreed
09. method of controlling vibration in relation to construction of scheme
10. minimise dust during construction
11. details of off site highway works
12. drainage details
13. archaeological scheme of investigation
14. scheme for footpath improvement
15. no equipment on roof
16. details of impact on highway wall
17. monitoring of retaining wall
18. details of loads on retaining wall
19. assessment of change in loadings to retaining wall

20. details of protection to original masonry wall
21. gym to be used for no other purpose in class D2
22. large scale details
23. detailed schedule of materials
24. extract ventilation system

Relevant Policies

-

Agenda Item 12

Application Number

P/2014/1182

Site Address

La Rosaire
Livermead Hill
Torquay
Devon
TQ2 6QX

Case Officer

Mr Scott Jones

Ward

Cockington With Chelston

Description

Demolition of existing building and construction of 8 new apartments

Executive Summary/Key Outcomes

The application is to demolish the existing dwelling and construct a three-storey building that would provide 8 apartments with 12 parking spaces.

The existing property is a relatively distinctive two-storey building with a three-storey corner tower feature. The plot is in a prominent location on the junction of Livermead Hill and Cockington Lane, overlooking the busy Torbay Road coastal route.

The scale and modern form of the proposed building is considered acceptable in the context. The design approach sits comfortably with the adjacent modern buildings. The height is aligned with the adjacent property/s, with only the feature corner element that would break the prevailing ridge line. The size of the plot is considered sufficient to comfortably accept the additional width proposed.

In terms of residential amenity the scheme retains acceptable living conditions for the occupants of adjacent properties. The proposed building lines and screening will not unduly affect the amenity of the residents of the attached property Oversands and there are no other residential plots in the locality that are likely to be affected due to the distances involved.

Parking is proposed at a ratio of 1:1 for the 8 flats with 4 additional visitor spaces. 7 spaces are provided in an under-croft, which also provides for safe and secure covered cycle parking. The level of parking is considered acceptable.

As the proposal increases the number of dwellings on the site developer contributions may be required to off-set the impact upon social and physical infrastructure if there are identified schemes in the locality. The agent has confirmed that the applicant is willing to pay the necessary obligations prior to the grant of permission.

Recommendation

Conditional approval; with conditions to include those laid out within this report; subject to (i) achieving appropriate planning obligations as considered necessary and (ii) the outcome of the pending ecological survey supporting the proposed redevelopment.

Site Details

The site sits on the junction of Livermead Hill and Cockington Lane, overlooking Torbay Road, and currently contains a relatively distinctive semi-detached property known as La Rosaire.

It adjoins a property known as Oversands, which is a relatively new modern-styled building that mixes render, expansive sections of glazing and cladding, all under a low-lying roof. To the other side of Oversands there is another modern styled building currently under construction, which will be flat-roofed with rendered elevations, extensive glazing and balconies.

In terms of plot layout the building sits in the southern part of the site and faces east towards the sea. The majority of the garden space is to the side (north) of the building with the land dropping gently towards Cockington Lane. Vehicular access is presently off Livermead Hill.

The site is within a Principal Holiday Accommodation Area and the train line to the rear is designated as a Wildlife Corridor. There is a linear flood risk zone adjacent to the site along Cockington Lane.

Detailed Proposals

This application proposes the demolition of the existing building and replacement with a 3 storey apartment building with a lower ground floor entrance and under-croft parking.

The building has a modern contemporary look, with rendered elevations punctuated with areas of metal cladding, plank boarding and prominent areas of glazing. The bulk of the roof would comprise a low-lying, dual-pitched structure finished in seamed aluminium, aside an area of flat-roofing.

Elevations are broken up by subtle changes in building lines and the mixing of materials.

Balconies are offered within the elevations through a mix of recessed and suspended structures enclosed with glass. The corner of the building is emphasised by a largely glazed tower with architectural detailing.

Internally the lower ground floor and under-croft offers 7 covered car parking spaces and covered cycle storage. The ground floor offers 3 flats (79m², 80m² and 95m²), the first floor 3 flats (79m², 88m² and 95m²), and the second floor 2

flats (85m2 and 151m2).

Vehicular access is moved from Livermead Hill to Cockington Lane via a recessed gated entrance that leads to 5 external car parking spaces and a defined waste storage area and the under-croft where 7 further parking spaces and cycle parking is provided.

Summary Of Consultation Responses

Torbay Design Review Panel comments -

Historical but relevant comments date from late 2012 where the panel reviewed two options. The proposal under consideration is comparable to the Option 1 favoured by the panel and considered the one most likely of success. General comments about the scheme included;

- The approach to the height and massing was perfectly satisfactory
- The North East elevation was good
- Support given to the idea of raising the height of the corner
- The landscape design was under-developed and needed exploring more
- The use of glazing should be carefully thought out to achieve a balance towards

heat losses and gains, with potential more natural shading techniques utilised in the design.

The full comments of the DRP and detail of the two options has been provided in the representations pack for context.

Network Rail - No objection in principle. Advice given that the applicant should contact Network Rail's Asset Protection Team as early as possible within the structural design phase should planning permission be granted, as there may be a risk that the railway may be undermined by the works.

Highways Department - No objection in principle. Parking spaces should be a minimum of 2.4m x 4.8m with adequate manoeuvring space. The visibility splay should be within the site boundary and a continuous footway clearly demarcated across its frontage. A financial obligation should be sought to cover the costs of the Traffic Regulation Order in order to cover the cost of relocating the taxi rank from where the new access is proposed.

Arboricultural Officer - Previous comments advised that no trees or significant vegetation exist within the site that would constrain development. The scheme was considered suitable for approval on arboricultural merit subject to a detailed landscape plan being submitted and approved. The arboricultural context has not changed and these comments are considered valid.

Drainage Department - Detailed design of the soakaways and how they have

been informed through infiltration testing should be sought prior to the grant of permission in order to ensure flood risk to properties and land adjacent is not increased as a result of the development.

The design of the soakaways should be in accordance with BRE Digest 365 and should cater for the 1 in 100 year storm event plus an allowance for climate change.

South West Water - No comments supplied. Previous application comments stated that as SWW has no apparatus that would be affected by the proposal they would offer no comment or requirement to development.

Summary Of Representations

Six representations received. The comments include;

- supports the application but raises concern in regard to the flag-like pole and whether this establishes a building height for future development
- concern in regard to overdevelopment
- The proposal is unsympathetic
- Visual impact and impact upon the spacious green quality
- Building heights going up
- Concern over how the proposal would be built where there is a flying freehold

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

Planning Applications:

- P/2001/0395 - Erection of four 1 bedroom holiday apartments with garages (in outline). Refused 18/5/2001.
- P/2007/1945 - Demolition of house, formation of 8 apartment building with 22 car park spaces and vehicular access. Refused 12/3/2008.
- P/2008/1255 - Demolition of house; formation of 8 apartment building on four floors and 12 car parking spaces and 1 space for disabled parking with vehicular access (revised scheme). Refused 16/10/2008. Appeal dismissed 06/05/2009.
- P/2009/0688 - Redevelopment to form 8 apartments, 13 car parking spaces with vehicular access (second revision). Refused 13/11/2009. Appeal dismissed 01/09/2010.

P/2012/0972 - Demolition of existing building and new build 8 apartments - Withdrawn.

P/2112/1225 - Demolition of existing building and new build 8 apartments - Resolved approval under delegated powers following Site Review Meeting protocol raised no member requests - Subsequently withdrawn by the applicant/agent due to the inability to sign the proposal S106 Legal Agreement and achieve the necessary planning obligations.

Appeal Decisions:

The two previous appeals dismissed relate to proposals for a 4-storey building with a central glazed atrium.

Inspector's comments indicated that a contemporary building on this prominent corner would be appropriate.

The Council's concerns about the additional bulk of these schemes were not shared.

Concern was largely related to design, initially the poor relationship with the adjacent property in terms of un-aligned floor heights and roof pitches, and the plain form which would provide a large yet bland building in a prominent location.

Detail of the schemes dismissed at appeal will be included within the committee presentation for context.

Key Issues/Material Considerations

The main issues are:

1. The principle of apartments
2. Visual impact
3. The quality of the residential environment
4. Amenity impact upon neighbouring plots/occupiers
5. Highway movement and parking
6. Flood risk and drainage
7. Ecology

1. The principle of apartments

The principle of apartments on the site is considered acceptable as it sits comfortably with the mixed residential character of the area, where both dwellings and flats/apartments sit side by side in varying building forms.

The location is well suited for residential use set in an urban context relatively close to employment opportunities, social and recreational infrastructure and transport links.

The principle of providing a larger building (and a greater number of units) on the site is generally supported in planning policy in terms of seeking to maximise the re-use of urban land, subject to other considerations.

Previous applications for apartments refused by the Authority in 2008 and 2009 did not cite objection to the principle of flats. The Inspector's comments in each subsequent appeal also omitted to raise the concept of flats as a concern.

Having considered the location and the mixed character of the area, in terms of building type and occupation, the provision of flats is considered aligned with Saved Local Plan Policies HS (Housing Strategy), H9 (Layout, design and community aspects) and H10 (Housing densities).

2. Visual impact

The scale, height and form of the building is considered acceptable in the context.

The height of the proposed building respects the established ridge line of the three properties on this part of Livermead Hill and is considered acceptable. To replicate the existing corner turret of La Rosaire the proposal includes a corner feature that extends above the height of the main building. This approach was endorsed by the Torbay Design Panel and the detail of the corner element is considered a successful response to the panel's desire for a bolder feature that added further 'delight' to the building.

The proposal would result in an increase in the size of the built form on the site. In regard to the proposed footprint the building will extend approximately 8m closer to Cockington Lane than the current building. Due to the splayed border to the north this will present a building where the front corner is approximately 11m from the edge of the plot with the lane and the rear corner 23m from the lane. The resultant gap between the building and Cockington Lane is considered sufficient in the context in order to retain a landscape setting, subject to planting detail. It is considered that by reason of the size of the application site and the context of the surrounding area that a building of the proposed scale could be satisfactorily accommodated without resulting in harm to the visual amenity of the area.

The front building line is pushed forward slightly however it retains an appropriate relationship and respect for the setting of the adjoining properties.

The rear building line is pushed back towards the boundary with the adjacent rail line however the additional extent of development is not considered visually harmful in the context of big buildings and big gaps that is locally prevalent.

The judgement on acceptance of the scale and height of the building is considered to be aligned with comments expressed by the Planning Inspectors in

previous appeals. The scale and height is aligned with Option 1 considered by the Torbay Design Panel where the panel concluded the scale and height to be perfectly satisfactory.

The elevation treatment has been explored and the concept is largely that submitted to and reviewed by the Torbay Design Review Panel where it was considered likely to be a success.

Subject to detail to ensure the quality of the layered approach and quality of the materials the scheme is considered to provide a suitable design solution for the site.

It is concluded that the scale, height and form proposed, subject to securing a high quality facade detail via condition, will provide a modern interesting building that would sit comfortably within the site and contribute positively to the evolving character of the locality.

The proposal is considered to sit comfortably with the aims of objectives in Saved Local Plan Policies BES (Built Environment Strategy), BE1 (Design of new development) and H9 (Layout design and community aspects).

3. Quality of the residential environment

The proposal will provide 8 apartments, each with 2 or 3 bedrooms, within the size range of 80m² to 150m².

The scale of the units that are proposed is considered acceptable as they appear to provide good quality internal living spaces with plenty of space, good natural lighting to rooms and good outlooks.

Outdoor amenity space is provided in the form of terraces/balconies and a degree of garden space. The level of space is sufficient in the context of seaside apartments.

With consideration of the scale of the units and broad living environment the quality of the proposal in habitation terms is considered acceptable and compliant with planning policy guidance, notably the aims and objectives of Saved Local Plan Policies HS (Housing Strategy) and H9 (Layout, design and community aspects), which seek to secure good quality homes and high standards of design.

4. Amenity issues

The impact of the additional height, the revised building lines and the proposed windows and balconies within it has been considered.

The plot is relatively detached from neighbouring plots other than to the south where it borders with and attaches to Oversands. The impact upon the occupiers

of Oversands is considered below.

The proposed building lines to the front and rear close to this border are similar to those of La Rosaire. It is unlikely that outlook or levels of natural lighting into rooms would be demonstrably affected by the bulk of the building that is proposed.

In terms of privacy the proposal seeks to provide balcony space to serve the apartments, which is similar to how Oversands has evolved. Due to the intricate relationship and building lines screening is detailed in order to protect amenity. With screening as detailed the relationship is considered acceptable as the development would retain suitable levels of privacy between properties.

With acceptable levels of local amenity maintained the proposal is considered compliant with the aims and objectives of Saved Local Plan Policies HS (Housing Strategy) and H9 (Layout, design and community aspects)

5. Highway and movement matters

The proposal provides a revised access with 12 parking spaces and covered cycle storage.

The revised access off Cockington Lane is considered acceptable and the Highway department do not object to this. Previous highway comments advised that the access should be no less than 6m back from the highway in order to ensure that cars do not temporarily overhang the highway. This can be addressed by condition. Also related to the access the Highway Authority has identified that funding for the Traffic Regulation Order should be achieved in order to move the taxi rank demarked where the proposed entrance will sit. This can be achieved within the wider request for planning obligations and is not a constraint to the development.

The level of parking, which provides 1:1 parking and 4 visitor spaces is considered acceptable. The layout and size of the spaces appears to accord with guidance (spaces being a minimum 2.4m x 4.8m with 6m manoeuvring space). The scheme also provides safe and secure cycle parking in the under-croft.

In the context the proposal provides acceptable development in terms of parking, movement and highway issues, subject to the obligations above being achieved. The proposal is considered compliant with the aims and objectives of Saved Local Plan Policies TS (Transportation strategy), T25 (Car parking in new development) and T26 (Access from development on to the highway).

6.0 Flood risk and drainage

The building sits outside of the adjacent linear flood risk zone however it is important to secure appropriate development that does not increase rainwater

run-off and thus contribute to the flooding of land or properties adjacent.

The proposed landscape plan details the location of new soakaways to serve the development. The Authority's Drainage Officer has requested further information in respect of detailed design and has recommended that this should be achieved prior to the grant of planning permission.

In this instance, as the plot is relatively large and there would appear scope to provide SUDS and/or on-site attenuation, it is considered pragmatic to seek detailed design prior to commencement via a planning condition.

7. Ecology

The ecological implications of the proposal have been considered in terms of protected species, habitat and biodiversity.

With the scheme involving the removal of a relatively old building and there being a large garden that sits adjacent to a wildlife corridor, it is considered that protected species may be present.

Further survey work has been requested which the agent is seeking to respond to.

The findings of this survey work will be a material consideration. It is not considered appropriate to grant permission in the absence of this detail.

It is recommended that a positive committee resolution is subject to the findings of this ecological work supporting the notion of the development in the context of protected species and/or habitats.

This survey work and mitigation proposals if required will ensure that the proposed development would be consistent with Policies NCS (Nature conservation strategy) and NC5 (Protected species) in the saved Local Plan.

S106/CIL -

The proposal seeks to intensify the residential provision on the site from one large dwelling to 8 flats of varying sizes. In-line with Council policy planning contributions related to the scale and the nature of residential development should be sought to counter the likely impact of the development upon local infrastructure.

1. Sustainable Development Contributions:

Based on supply of 5 units 75-94m², 2 units 95-119m² and 1 unit +120m², with mitigation for the current building, 1 unit at +120m²

Waste Management	£ 350
Sustainable Transport	£17,170 (subject to scheme identification)
Greenspace and Recreation	£12,620 (subject to scheme identification)

2. Highway Contribution:

Traffic Regulation Order Works: Subject to cost quote from the Highway Authority.

Total for development: subject to the matters above.

The applicant has confirmed that they are willing to pay any necessary obligation prior to the grant of permission.

Conclusions

The proposed apartment building, which offers 8 flats, is considered to be suitably scaled within the context of the area and considering the prominence of large buildings.

Its form and detailed design is also considered to present a successful modern development in an area where there is an eclectic building form and mixed character.

The building is supported by suitable levels of ancillary facilities, such as parking, cycle provision, waste storage and amenity space.

On balance the scheme is considered to offer an acceptable form of residential redevelopment, subject to suitable conditions to achieve a high quality finish, achieving planning obligations to offset its direct impact upon local infrastructure, and subject to findings of the pending ecological survey work.

Condition(s)/Reason(s)

01. submission and approval of materials and colour palette
02. submission and approval of detailed design drawings for key elements of the building
03. submission and approval of a detailed landscape scheme
04. submission and approval of a sustainable urban drainage solution
05. submission and approval of a revised access detail that shows a gated entrance no less than 6m beyond the edge of the public highway
06. submission and approval of boundary wall and any other means of boundary enclosure
07. car parking to be completed and made available prior to occupation and maintained thereafter
08. cycle parking made available prior to occupation and maintained thereafter

09. prior to occupation the obscure glazed screening shall be fitted and then maintained thereafter
10. The flat roof shall not be used for recreational purposes and shall only be accessed for essential maintenance
11. Removal of permitted development in regard to walls, fences and other means of enclosure.

Relevant Policies

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Application Number

P/2015/0042

Site Address

Princess Gardens
Off Torbay Road
Torquay
Devon
TQ2 5EQ

Case Officer

Mrs Ruth Robinson

Ward

Tormohun

Description

Temporary erection and operation of a 50m observation wheel with ticket booking office to the west (front of wheel) adjoining coffee & crepe unit within a timber decked seating area to the south (facing out to the harbour) and secure panelled service, ride control and generator compound area to the east (pavilion side). Open daily to the public from Saturday 28th March 2015 until no later than Sunday 1st November 2015.

Executive Summary/Key Outcomes

This application is for a further temporary consent for the erection of a 50m observation wheel with ticket office and ancillary coffee and crepe unit.

It is proposed to begin construction from the 18th March 2015 and for the Wheel to be dismantled by the 6th November 2015. The Wheel is proposed to be operational for a 7 month period from the 28th March 2015 until the 1st November 2015.

The Wheel is to be sited adjacent to the Pavilion in Princess Gardens. The former is a Grade II listed building. The latter is a Grade II entry on the Register of Historic Parks and Gardens.

Temporary consent for an Observation Wheel was initially granted by the DMC on the 13th August 2012. This was for a 3 month period between the 13th August and 7th November 2012. Since that time there have been two further periods of temporary permission granted each time for a slightly longer period. This application represents the fourth request for permission for temporary use of the site for the Observation wheel.

This application seeks a further 7 month period for operation.

At the end of each period of occupation the Wheel has been removed from site within the prescribed time period and the site has been restored as agreed.

The wheel has been generally well received and popular with locals and tourists alike.

Objections relating to loss of privacy and light pollution have been received in response to previous applications from a number residents who directly overlook the site. This has reduced to a single objection in response to the current application.

It was concluded that privacy was not a sustainable objection to the scheme but that the level of light pollution could constitute a nuisance. Following surveys by a Lighting Engineer, suitable mitigation in the form of vinyl overlays to the pod lighting was secured by condition and these measures were in place for the duration of the previous occupation.

It was noted in the original report to Committee that a permanent permission for an Observation Wheel in this location would not be considered acceptable due to the impact on the Pavilion, which is a Grade II listed building, on its setting and on the character of the wider Princess Gardens, which is a Grade II entry on the register of Historic Parks and Gardens.

This report however recommended that a short term occupation of the site should be welcomed as it would enhance the tourist attraction of the area and any adverse impacts would be short lived and reversible. This has proven to be the case.

Given the current uncertainty over timing of the Pavilion redevelopment proposals, which, if on site would preclude continued occupation of this part of the gardens, then a further temporary period of occupation seems reasonable. Any future, more regular use of the Gardens by the Wheel should be subject to a more rigorous assessment as requested by EH and linked to mitigation to achieve some conservation benefit for the 'at risk' gardens.

Recommendation

Approval, temporary consent be granted until 6th November 2015. Conditions are required to ensure that the agreed measures to reduce light nuisance are reinstated to the pods, to restrict hours of operation and achieve reinstatement of the affected part of the gardens.

Statutory Determination Period

This application should be determined within an 8 week period as it only qualifies as minor development. The target date for determination is the 20th March 2015.

Site Details

The observation wheel is proposed to be sited on the garden area immediately adjacent to the Pavilion. This is a sensitive location; it is prominent within the Torquay Harbour Conservation Area, is adjacent to a Grade II Listed building and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. The Fountain and War Memorial, which are located close by are also Grade II listed.

Detailed Proposals

This application is for temporary consent for the erection of a 50m observation wheel with ticket office and ancillary coffee and crepe unit from the 18th March 2015 until the 6th November 2015. It is proposed to be operational between the 28th March and the 1st November.

Summary Of Consultation Responses

English Heritage: EH have consistently expressed concerns about the potential harm that this structure could cause to the Heritage Asset. Given that the proposal was temporary and the harmful impact short term and transitory a more pragmatic approach was taken. EH did stress that if the proposal was to become more permanent in nature, then a better assessment of its impact on Heritage Significance should be made. Their response to this further application, and to the suggestion in the submission that when the restoration of the Pavilion is up and running that an alternative location closer to the Princess Theatre would be investigated has generated a suggestion that the impact of the structure should be assessed against the criteria in EH's 'Temporary Structures in Historic Places' as it appears to be becoming an annual event. It is also suggested that as Princess Gardens is 'at risk' some mitigation or Conservation gain should be achieved.

Garden History Society: Do not wish to object due to the temporary nature of the scheme.

Environment Agency: Raises no objection to the scheme.

Environmental Health: Providing the light pollution mitigation continues then would raise no objection to the renewal of temporary consent.

Summary Of Representations

Two letters of support have been received along with one letter of objection from a close neighbour to the site who continues to be concerned about the loss of privacy, light nuisance and noise.

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

P/2012/0690: Temporary consent for Observation Wheel between 13th August and November 2012: Approved 15.08.12.

P/2013/0167: Temporary Consent for period 24th May- 5th November: Approved 8.04.13.

P/2014/0193: Temporary consent for period March-October 2014. Approved: 15.04.14.

Key Issues/Material Considerations

Due to the sensitive location of this proposal and its more frequent appearance, the effect on the listed buildings, the Registered Gardens and the wider Conservation Area is a key issue.

It has always been accepted that a permanent occupation of the site by the wheel would be, in the long term, harmful to the architectural and historical character of the site.

In granting the previous temporary consents, Members agreed with Officer advice that a temporary use of the site by the wheel was welcome as it would enhance the attractiveness of the wider area for tourists and residents alike and the impacts on the heritage features of the site were short term and reversible.

This has proven to be the case, the wheel has been immensely popular, has attracted tourists, created a dramatic and striking feature within the townscape and, once removed, the site was quickly and satisfactorily reinstated to its former condition.

A permanent use of the site for this purpose however is still considered unacceptable due to its impact particularly on the Pavilion and its setting. However, until the works to restore the Pavilion begin, it would seem reasonable to allow temporary uses such as this to continue as they do add to the tourist offer and enhance vitality of the area, compensating to some degree for that lost following the closure of the Pavilion.

Planning and Listed Building applications addressing the future of the Pavilion are currently under consideration. Given the uncertainty around timing of these proposals it seems reasonable to allow a further temporary period of occupation by the Wheel pending greater certainty about when works to the Pavilion are likely to take place. Clearly if they do proceed, the Wheel could not continue to

occupy this part of the Gardens and any alternative more regular location for the Wheel in Princess Gardens should be subject to a more rigorous assessment of impact as suggested by EH. The ability to derive some Conservation benefit to the Gardens should also be considered in more detail.

In terms of amenity, providing the light mitigation measures continue then any accepted impact on amenity will be satisfactorily dealt with. It has previously been determined that the impact on privacy and noise nuisance are not sustainable reasons to resist the Wheel subject to conditions to restrict the hours of operation.

The structure poses no threats to the structural integrity of the Pavilion or the Gardens, which comprise reclaimed land. This is due to the fact that the load of the structure is to be spread by increasing the size of the load bearing plates. This has all been agreed and verified by the Council's structural engineers. Matting, sleepers and boards will be used to minimise the impact of footfall on the ground around the wheel. The wheel will not operate in winds of over 40 mph.

It is important that the site is reinstated following occupation and this needs to be secured by condition.

As such it is not considered that a further period of temporary occupation will compromise the aims and objectives of policies BE5, BE6 or BE8 of the saved Adopted Local Plan 1997-2011.

Conclusions

Previous concerns regarding light nuisance have been resolved through the use of vinyl overlays to the cabin lighting. Providing these measures continue then the impact on neighbours is minimised. Restrictions of the hours of operation will ensure that late night activity will not be a problem in terms of noise and disturbance.

English Heritage have concerns regarding the frequency of occupation of the site by the Wheel and its potential to harm the setting of the Pavilion and Princess Gardens. Given the current uncertainty over timing of the Pavilion proposals, which, if on site would preclude continued occupation of this part of the gardens, then a further temporary period of occupation seems reasonable. Any future, more regular use of the Gardens by the Wheel should be subject to a more rigorous assessment and linked to mitigation to achieve some conservation benefit for the 'at risk' gardens.

Recommendation:

Approval; subject to the following conditions.

01. Prior to any operation of the Wheel, the vinyl overlay as agreed in relation to P/2014/0193 shall be applied to the pods in accordance with the previous written advice of the Lighting Engineer. The vinyl overlay shall be retained in place for the duration of the Wheel's occupation of Princess Gardens.

Reason To ensure that residents who overlook the site are protected from unacceptable levels of light nuisance in accordance with policy EP5 of the Saved Torbay Local Plan 1995-2011.

02. The permission, allowing occupation of the site by the observation wheel, shall be for a temporary period only, and shall not commence until the 18th March 2015 and shall expire on or before the 6th November 2015. Following removal of the observation wheel on or before this date, the gardens shall be reinstated in accordance with details that shall have previously been submitted to and agreed in writing with the LPA. The agreed scheme of reinstatement shall be implemented in the first planting season following the removal of the wheel.

Reason: The use of the site by the Wheel is only acceptable on a short term basis and more lengthy occupation would be harmful to the setting of the listed buildings, to the character of the Registered Gardens and the wider Torquay Harbour Conservation Area contrary to policies BE6, BE8 and BE5 of the saved Torbay Local Plan 1995-2011.

03. The Wheel and associated ancillary catering facilities shall only operate between the hours of 10.00 hours and 22.00 hours daily.

Reason: To ensure that disturbance to residents who overlook the site is minimised.

Relevant Policies

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Application Number

P/2015/0103

Site Address

5-7 Ilsham Road
Torquay
Devon
TQ1 2JG

Case Officer

Mrs Ruth Robinson

Ward

Wellswood

Description

Variation of condition 7 pursuant to P/2014/0827 (2 new Dwellings and Change of use from A3 (Restaurants & Cafes) to A1 (Shop) and also from part,C3 (Dwelling house) to A1 (Shop)) - hours of operation of shop.

Executive Summary/Key Outcomes

5 and 7 Ilsham Road comprise an adjoining Restaurant (A3) and Shop (A1) within an established Local Shopping Centre with a flat and small office suite above.

Planning permission was granted by DMC at its meeting of the 13th October 2014 for a range of works to these premises to provide 4 residential units and for works to the ground floors of both No5 and 7 Ilsham Road to provide a larger retail unit.

This was approved subject to a number of conditions and submission of additional material in relation to the plant and extract systems only.

In terms of the operation of the shop, the only conditions considered by DMC related to hours of servicing of the unit.

There were no conditions included in the Officer report nor requested by DMC relating to the hours that the shop itself could operate.

In issuing the Decision Notice, in view of continuing local concern, a view was taken that some control of the operating hours of the shop would be beneficial and a condition restricting operation of the unit to between the hours of 8.00am and 22.30 hours daily was included.

The Councils solicitor advises that the imposition of condition 7 was 'ultra vires' as the Committee's decision to approve the application did not include a condition to restrict the operating hours of the shop.

As such, the condition is susceptible to challenge through judicial review. A successful challenge could result in it being struck out and could render the Council liable for costs.

The applicant is however amenable to some degree of control but requires an additional hour in the morning and an extra 30 minutes in the evening. He has thus applied to vary the 'unlawful' condition.

If the current application is approved the Council will retain control over hours of operation which will protect the amenity of local residents. The Council would not have had such control if the Decision Notice had been issued as originally considered by DMC Members.

In view of this, it is recommended that the application be approved.

Recommendation

That the condition be varied to allow operation of the shop between the hours of 7.00 and 23.00 daily.

Statutory Determination Period

The 8 week determination date is 3rd April 2015.

Site Details

Numbers 5 and 7 Ilsham Road form part of the Wellswood Local Shopping Centre. They are identified as key buildings within the Lincombes Conservation Area which form part of a building group of architectural importance which make a significant contribution to townscape.

There are residential properties above and to the rear along Kents Lane. Ilsham Primary school is located opposite.

Planning permission was granted in October 2014 for a range of works to these premises to provide 4 residential units and for works to the ground floors of both No5 and 7 Ilsham Road to provide a larger retail unit.

Detailed Proposals

This application seeks to vary condition 7 pursuant to P/2014/0827. This specified that the operation of the shop was restricted to between the hours of 8.00am to 22.30 hours daily. An extension of an hour in the mornings and 30 minutes in the evening is sought.

Summary Of Consultation Responses

The Councils Solicitor Advises that the imposition of condition 7 was ultra vires as the formal decision to approve the application did not include a condition to restrict the operating hours of the shop.

Summary Of Representations

Numerous public representations have been received. Many of the letters appear to be objecting to the principle of a supermarket being established on the site rather than specifically addressing the variation to condition 7. The balance of representations related to the additional noise and disturbance likely to arise from the extended hours of operation.

These representations have been sent electronically to Members for their consideration.

Relevant Planning History

- P/2014/0328: Change of use of the upper floor of No 7 Ilsham Road from B1 to Residential: Prior Notification Not required 29.5.2014
- DE/2014/2081: 2 new dwellings and formation of larger Retail Unit Supported in principle 10.7.2014.
- P/2014/0827: 2 new dwellings and formation of larger retail unit: Approved: 30.01.2015.

Key Issues/Material Considerations

There is continuing concern about the possible occupation of the larger retail unit by a supermarket operator and the possible impact this will have on the character and amenity of the area and on the range of local shops as is clear from the scale and content of the responses to this application.

To recap on this matter, as was explained in the report to the DMC of the 13th October, the use of the majority of the floor space comprised within the 2 units and its amalgamation to provide a larger unit would not have needed planning permission. All that required consent was a minimal increase in floor space through inclusion of the existing covered courtyards to the rear of both units and a small flat.

In policy terms, the site is located in a defined Local Centre where the retention/creation of shopping floor space is positively encouraged in order to help reinforce the local shopping function. It is not possible within this guidance

to differentiate between 'good' small independent shops and big 'bad' supermarket operators which is clearly at the root of resident concerns.

Nonetheless, issues in relation to amenity are relevant and in determining the application officers recommended conditions restricting hours of servicing and operation of plant.

Hours of operation of the shop itself was not included in the report to DMC nor was it considered necessary during the detailed debate in relation to the application at DMC.

This position was influenced by the fact that none of the retail units on Ilsham Road are subject to any form of planning control over hours of operation and this parity has to form part of the assessment of what is reasonable to impose in terms of conditions.

In issuing the Decision Notice, in view of continuing local concern, a view was taken that some control of the operating hours of the shop would be beneficial and a condition restricting operation of the unit to between the hours of 8.00am and 22.30 hours daily was included.

The Councils Solicitor is of the view that the imposition of a condition that was not included in the Development Management Committee's consideration and determination of the application could be considered 'ultra vires' and as such, the applicant could challenge the imposition of the condition through judicial review, which could result in it being struck out and could render the Council liable for costs.

The applicant is however amenable to some degree of control but requires an additional hour in the morning period and an extra 30 minutes in the evening. He has thus applied to vary the unlawful condition.

Such a condition will give the Council some control over hours of operation which will protect the amenity of local residents which there would not have been if the Decision Notice had been issued as originally considered by DMC Members.

In view of this, it is recommended that approval should be granted to the variation which will deliver a higher degree of protection to residential amenity than would be achieved if the Decision Notice had been issued as originally approved by DMC

Conclusions

That condition 7 in relation to the hours of operation be varied to allow the shop

to operate between the hours of 7.00am to 23.00 hours daily.

Relevant Policies

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