



Thursday, 28 April 2016

## **DEVELOPMENT MANAGEMENT COMMITTEE**

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

**Monday, 9 May 2016**

commencing at **2.00 pm**

The meeting will be held in the Grace Murrell Suite, Riviera International Conference Centre, Chestnut Drive, Torquay

### **Members of the Committee**

Councillor Kingscote (Chairman)

Councillor Barnby  
Councillor Cunningham  
Councillor Darling (S)  
Councillor Manning

Councillor Morey  
Councillor Robson  
Councillor Stringer  
Councillor Winfield

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

**Amanda Coote, Town Hall, Castle Circus, Torquay, TQ1 3DR**  
**01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

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# 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 11 April 2016.

(Pages 4 - 6)

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. **Appeal Decisions**

To note the outcomes of appeals.

6. **Oldway Mansion, Torquay Road, Paignton CN/2015/0081/CON & CN/2015/0100/CON (1 combined report)**

(Pages 7 - 22)

Discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 for P/2011/1020 (Change of use of Oldway Mansion and Rotunda from Council Offices to hotel with ancillary conference and spa facilities. External alterations, entrance foyer and refurbishment/reinstatement of glass conservatory. Demolition of squash courts. Improvements to existing car parking area and new car parking to rear service area).

Discharge of condition re (P/2011/1021) Change of use of Oldway Mansion and Rotunda from Council offices to hotel with ancillary conference and spa facilities Condition 4 - Phasing Programme Condition 5 - CMP, Detailed Programme Conditions Survey and Structural Survey Condition 7 (Mechanical and Electrical and Civil Structural Strategy Condition 8 - Lighting Strategy Condition 9 - Flues and Extracts.

7. **177 Roselands Drive, Paignton, TQ4 7RN (P/2016/0140/HA)** (Pages 23 - 26)  
Extension to garage with a tiled pitched roof and conservatory.
8. **6 Quantocks Road, Torquay, TQ2 6UH (P/2016/0125/HA)** (Pages 27 - 31)  
Single storey extension, entrance porch & integral garage.
9. **63 Babbacombe Downs Road, St Marychurch, Torquay, TQ1 3LP (P/2016/0277/MOA)** (Pages 32 - 46)  
Demolition of existing building. Formation of 14 Apartments with parking and 2 restaurants/cafe (A1, A3, A4 and A5 use categories).
10. **Land At Princess Gardens, Off Torbay Road, Torquay, TQ2 5EY (P/2016/0384/PA)** (Pages 47 - 54)  
Change of use of land for the temporary erection and operation of a 50m observation wheel and associated ancillary development until 31 October 2016.
11. **28 Shiphay Avenue, Torquay, TQ2 7EA (P/2016/0385/HA)** (Pages 55 - 58)  
Side Extension (Re Submission of P/2016/0093).
12. **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](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.
13. **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, 4 May 2016. 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](http://www.torbay.gov.uk) within 48 hours.



## Minutes of the Development Management Committee

11 April 2016

-: Present :-

Councillor Kingscote (Chairman)

Councillors Cunningham, Manning, Morey, Robson, Stringer, Winfield and Tolchard

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### 98. Apologies for absence

An apology for absence was received from Councillor Darling.

It was reported that, in accordance with the wishes of the Conservative Group, the membership of the Committee had been amended for this meeting by including Councillor Tolchard instead of Councillor Barnby.

### 99. Minutes

The Minutes of the meeting of the Development Management Committee held on 14 March 2016 were confirmed as a correct record and signed by the Chairman.

### 100. Former Wall Park Holiday Centre, Wall Park Road, Brixham (P/2015/0057/MPA)

The Committee considered an application for the partial revision of the layout approved under P/2013/0785 to replace 10 dwellings with 18 dwellings and change an open market dwelling to affordable housing, together with landscaping, parking and associated works.

Prior to the meeting written representations were circulated to members. At the meeting James Durant addressed the Committee in support of the application.

Resolved:

Approved, subject to

- (i) satisfactory resolution of issues relating to landscaping, highways and drainage, and a variation of the Section 106 Agreement; and
- (ii) determination of conditions which relate to archaeology, construction, tree/hedgerow protection and landscaping, contaminated land, drainage, materials and building details, ecology, transport plan, cycle and bin storage, parking, secured by design and lighting being delegated to the Chief Executive.

**101. Land West Of Brixham Road, Paignton (P/2015/1126/MRM)**

The Committee considered an application for appearance, landscaping, layout and scale in relation to 216 dwellings and associated development.

Prior to the meeting written representations were circulated to members.

Resolved:

That the application be refused on the grounds of overdevelopment and insufficient car parking.

**102. Torquay Academy, Cricketfield Road, Torquay (P/2016/0056/MPA)**

The Committee considered an application for a new multi use hall, dining area extension and refurbishment of existing drama space to provide additional classrooms.

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:

- (i) the receipt of surface water attenuation design to the satisfaction of the Council's Drainage Department; and
- (ii) the conditions set out in the submitted report.

**103. Land Off Newton Road And Riviera Way, Torquay (P/2016/0078/MPA)**

The Committee considered an application for the construction of a new railway station to include the following:

Two single sided station platforms, provision of a footbridge between platforms, elevated walkway and access ramps, car park facility for 28 car parking spaces (as amended)(including four reduced mobility parking spaces), motorcycle parking and 12 cycle spaces, extended footpath along Riviera Way, lighting and CCTV, and platform furniture to include shelter and signage.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members. At the meeting Barry Dunnage and Darren Cowell addressed the Committee against the application and David Whiteway addressed the Committee in support of the application.

Resolved:

Conditionally approved, subject to the receipt of satisfactory revised plans before the next meeting of the Development Management Committee to remove the car parking provision or the application be refused on the grounds that the car park proposed as part of the scheme would cause an unacceptable loss of trees and other natural features of significant landscape value contrary to policy C4 of the Local Plan, would undermine the value of the Urban Landscape Protection Area contrary to policy C5 of the Local Plan and would have a detrimental effect on the amenity of local residents by way of increased traffic and noise.

In the event of submission of satisfactory amended plans, approval is subject to:

- i) completion of a Habitats Regulations Assessment that concludes no likely significant effect; and
- ii) the submission of surface water attenuation design details, including maintenance, to the satisfaction of the Council's Drainage Department in consultation with Network Rail, and the Environment Agency's response in relation to the 'mained' river and adjacent culvert.

(Note: The Vice-Chairman, Councillor Morey, chaired the meeting for this item only.)

**104. 101 Braddons Hill Road East, Torquay (P/2016/0139/VC)**

The Committee considered an application for variation of condition P1 pursuant to P/2015/0897: Amendments to elevational treatment comprising replacement of hipped roofs to semi detached dwellings with gabled roofs and changes to fenestration facing Museum Road. Changes to approved scheme to construct 9 two storey dwellings with 9 car parking spaces and partial demolition of stone boundary wall fronting Museum Road to create vehicular and pedestrian access.

Resolved:

That Condition 1 be varied to allow the inclusion of revised plans which show the changes to the design of the Museum Road elevation.

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Chairman

# Agenda Item 6

**Application Number**

CN/2015/0081 &  
CN/2015/0100

**Site Address**

Oldway Mansion  
Torquay Road  
Paignton  
Devon  
TQ3 2TY

**Case Officer**

Mrs Ruth Robinson

**Ward**

Preston

**Description**

Discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 for P/2011/1020 (Change of use of Oldway Mansion and Rotunda from Council Offices to hotel with ancillary conference and spa facilities. External alterations, entrance foyer and refurbishment/reinstatement of glass conservatory. Demolition of squash courts. Improvements to existing car parking area and new car parking to rear service area)

**Executive Summary/Key Outcomes**

Applications to discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa were considered by DMC at meetings on the 9th February and 4th March 2016.

Of particular significance were conditions relating to phasing which link the implementation of the enabling development (the 101 dwellings) to the restoration works to the listed buildings and grounds and secure an enforceable timeframe for delivery of these restoration works.

These are No's 3 and 4 related to P/2011/1020/PA and No 4 related to P/2011/1021/LB.

Condition 3 requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.

Condition 4 required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

The information to discharge these conditions was included in a revised Outline Development Programme (ODP) which sought to change the time frame and mechanism for delivery.

There were a number of concerns about the ability of the revised ODP to deliver the restoration of these key listed buildings and consequently officers at the meeting of the 9th February recommended that the information submitted to discharge these conditions should be refused.

A decision was deferred on the matter to allow the IVA (Independent Viability Assessment), a key document which helped underpin the decision to approve the scheme, be updated and to allow officers to explore matters such as the time frame for delivery and the means of achieving greater security over delivery of the restored listed buildings and grounds.

At the meeting of the 14th March it was explained that the review of the financial data had taken longer than anticipated but that it was hoped that a further 2 months would be sufficient to finally resolve these matters. There have been several discussions/meetings with the applicants, and progress is being made towards identifying a way forward.

The results of the updated IVA should be available within the next 2-3 weeks. It has taken longer than anticipated as it is a complex matter and the IVA assessor required further more detailed information than that initially provided. An up to date position on progress with the IVA will be available from officers at the meeting on 9th May.

Once available, the financial appraisal should be reviewed by Historic England's Enabling team.

Their involvement is also important in terms of exploring concerns about how the implications of the extended time frame for delivery can be mitigated and what means are available in terms of ensuring delivery of the restored listed buildings.

In view of this, Members are requested to allow a period of a further 2 months for both the IVA to be completed and for Historic England's Enabling team to review that Report. An Interim Report on the updated IVA can be made available to Members in advance of the HE Enabling team review if required.

### **Recommendation**

A further 2 months be allowed for completion of the IVA and for review of the outcome of this with Historic England's Enabling Team.



## **APPENDIX 1**

### **Executive Summary from report to DMC on 9th March 2016**

*Applications to discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa were considered by DMC at its meeting of the 9th February.*

*Of particular significance were conditions relating to phasing which link the implementation of the enabling development (the 101 dwellings) to the restoration works to the listed buildings and grounds and secure an enforceable timeframe for delivery of these restoration works.*

*These are No's 3 and 4 related to P/2011/1020/PA and No 4 related to P/2011/1021/LB.*

*Condition 3 requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.*

*Condition 4 required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.*

*The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.*

*The information to discharge these conditions was included in a revised Outline Development Programme (ODP) which sought to change the time frame and mechanism for delivery.*

*The executive summary of that report is appended which explains the key alterations to the ODP and its deficiencies.*

*In summary, concerns related to:*

- i) The extended time frame for delivery.*
- ii) The change in the delivery strategy whereby the capital receipt anticipated from the disposal of the enabling plots would not be delivered upfront but on a more piecemeal basis.*
- iii) The reliability of the financial appraisal of the project included in the IVA (Independent Viability Assessment) which underpinned the decision to*

*approve the applications given the increased restoration costs and erosion of the Fernham receipt. Whether this would lead to a need for additional enabling development to meet an increased conservation deficit is a critical issue from the LPA's perspective*

*Officers had recommended that the information submitted to discharge these conditions should be refused because it failed to ensure that the scheme would be delivered in its entirety in an appropriate manner and in a time frame that would secure the future of the listed buildings on the site and it would also fail to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex.*

*In addressing Members at the meeting of the DMC on 9th February 2016, the applicant raised a series of points that he wished to be taken on board. In summary these were:*

- i) That protective works would be carried out sooner than anticipated in the original ODP*
- ii) That the implementation of the enabling development themselves rather than through upfront disposal would deliver a greater profit that could be directly invested in the restoration of the listed buildings*
- iii) That only £3.5m would have been available in the form of a 'bond' due to the need to extract fees and the costs of relocating the bowling club from the anticipated £5m enabling pot.*
- iv) That greater monies have been committed to the project than anticipated in the original ODP.*

*The applicants also agreed to consider two key items which they had previously been reluctant to do.*

*These were the use of a joint account or replacement 'bond' to provide a similar level of security regarding the delivery of restoration works to that delivered via the 'upfront' capital receipt and to rerun the IVA to examine the financial robustness of the project and whether its delivery was feasible given the increase in costs and the erosion of the Fernham receipt.*

*On that basis, Members agreed to defer the decision for a period of one month to allow these two factors to be explored and whether any greater security about delivery of the restored buildings and grounds could be achieved.*

*Discussions were held with the applicant immediately following the DMC decision. Agreement has not been reached about the form that a replacement 'bond' could take although some progress was made.*

*It was agreed that the consultant who carried out the original IVA should be used to carry out the reappraisal. However, due to holiday arrangements it has not*

*been possible to carry this out in the time frame Members requested. A meeting has been set up for the 9th March to establish terms of reference and to take this forward. It will also enable the claims of increased investment to be properly analysed.*

*In view of this, Members are requested to allow a period of a further 2 months for this assessment to be carried out and for further discussion regarding the options around securing delivery of this project.*

**Recommendation**

*A further 2 months be allowed for a reappraisal of the IVA to be carried out and for further discussion regarding the options around securing delivery of this project.*

## **APPENDIX 2 ORIGINAL REPORT TO DMC ON 9TH FEBRUARY 2016**

### **Statutory Determination Period**

*These applications were submitted on the 18th August should have been determined by the 14th October. The delay is due to ongoing negotiations.*

### **Site Details**

*Oldway Mansion is a Grade II\* listed building formerly used as Council offices. The Rotunda and Stables are Grade II listed and in an extremely poor state of repair. All are currently vacant. They are set within a Grade II entry in the Register of Parks and Gardens. The site has the benefit of a series of related planning and listed building consents designed to achieve restoration of the buildings and grounds for hotel purposes.*

### **Detailed Proposals**

*These are applications to discharge various conditions in relation to the planning and listed building consents for the change of use of Oldway Mansion and the Rotunda from Council Offices to a Hotel with ancillary conference and spa facilities.*

*CN/2015/0081 relates to the discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 pursuant to P/2011/1020/PA*

*CN/2015/0100 relates to the discharge of conditions 4 5 7 8 and 9 pursuant to P/2011/1021/LB.*

*Conditions 3 and 4 in relation to P/2011/1020 and condition 4 in relation to P/2011/1021 are of particular significance in terms of delivery of the project.*

*The remaining conditions are of a more technical nature and information sufficient to satisfy these has been submitted. These could be discharged under delegated powers as they do not go to the heart of the permission. The development could not however proceed unless all relevant pre commencement conditions are formally discharged.*

### **Summary Of Consultation Responses**

*Historic England has been consulted and a response is awaited.*

### **Summary Of Representations**

*None.*

### **Relevant Planning History**

*A scheme to deliver a Hotel and Spa in the Mansion, Rotunda and Stables funded by residential development within the grounds was approved by DMC in April 2012. The planning permissions were issued on the 24th August 2012.*

*Planning and Listed building applications to achieve this are:*

*P/2011/1020: Change of use of Oldway Mansion and Rotunda to hotel with ancillary conference and spa facilities. Approved: 24.08.12.*

*P/2011/1021: Listed building consent in relation to the above. Approved by Secretary of State: 10.10.12.*

*P/2012/1011: Change of use and restoration of Stables to hotel use: Approved 24.10.12*

*P/2012/1012: Listed building consent in relation to the above. Approved by Secretary of State: 11.12.12.*

*P/2011/0925: Development within the grounds of Oldway Mansion to provide 46 3 and 4 bed houses, new 4 rink bowling centre, reconfiguration of 6 tennis courts, new public car parking, restoration of historic gardens and landscape, construction of 55 sheltered units. Approved 12.09.12*

### **Key Issues/Material Considerations**

*The key issue is whether the information submitted to discharge conditions 3 and 4 of permission P/2011/1020/PA and condition 4 of permission P/2011/1021/LB which relates to the submission of a revised outline delivery programme (ODP) for the project as a whole delivers adequate confidence about delivery of the restoration package for the Mansion, Rotunda and Stables.*

*These conditions were of significance in Members reaching a determination on the parent applications. They tied implementation of the scheme to the timetable and delivery strategy embodied in Development Agreement between the Council as landowner and the applicant.*

*For this reason it is considered appropriate that any changes to the ODP and the implications this has in relation to delivery are considered and determined by Development Management Committee.*

### **Background:**

*In 2007 an informal brief was published to provide guidance about the options for securing investment in the site. This suggested hotel development in the key listed buildings with limited residential development within the Registered Park and Garden to fund restoration of the declining heritage asset.*

*Separate planning and listed building applications were submitted in August 2011 in relation to the change of use of the main buildings to a hotel complex and the inclusion of residential development in the wider grounds. The applications were agreed in principle by DMC in April 2012.*

*The residential development within the Registered Park and Garden comprised 'enabling development' and was only approved on the basis that it was*

necessary to secure the restoration of the Mansion, Rotunda, Stables and grounds.

The enabling development comprised the development of Fernham to provide 55 sheltered units, which is now complete, and within the grounds, the provision of 46 dwellings in the less sensitive parts of the Registered Park and Garden. These are Zones C/D adjacent to Oldway Road and Zones A on the site of the Indoor Bowling Club.

The scheme was required to meet the key tests in Historic England's document 'Enabling Development and the Conservation of Significant Places' (2008). This requires that:

- The 'achievement of the heritage objective is securely and enforceably linked' to the enabling development so that delivery is guaranteed and the LPA is not left in a position where the enabling development is built out but the benefits it was approved to pay for are not secured. This can be done through a S106 agreement, use of a bond or through the use of conditions related to phasing agreements or triggers on occupation.
- The enabling development also has to be shown to be the minimum needed to secure the restoration of the heritage asset. This requires a detailed financial assessment of the costs of restoration balanced against the value of the project to ensure that whilst it is indeed the minimum required to secure the heritage asset there is sufficient value to ensure that the project in its entirety can be delivered and the LPA won't be faced with demands for additional development to fund increased costs. This was confirmed through an Independent Viability Assessment (IVA) and Members were briefed accordingly.

When the decision was made to approve the development on the site, there was an Outline Development Programme (ODP) which was embedded in the Development Agreement between the Council as landowner and the applicant. This was considered to meet these key tests and to provide adequate security about delivery of the project.

In summary, it secured the timely restoration of the buildings against a defined timetable and crucially secured an upfront capital receipt of £5m from disposals of the residential plots to be placed in a jointly managed account. It was sufficient to cover about 2/3rds of the estimated costs of restoring all the listed buildings and about half of the cost of the overall project. This acted like a bond and provided security about delivery of the scheme. It meant that the construction of enabling development could not commence until the money to fund restoration was delivered to the joint account and that necessary restoration works to the listed buildings could commence quickly.

1. *The use of conditions to secure delivery of the wider project.*

*Historic England's guidance in relation to enabling development recommends that assets should be repaired before the enabling development commences or the funds necessary to do so deposited as a bond. In this case, the bond was to be secured via the Development Agreement.*

*Phasing conditions were therefore applied to all the permissions in relation to the site to tie them together and to ensure that the scheme was delivered in accordance with the approved site-wide ODP and that any changes to it would have to be agreed with the LPA in writing.*

*A pre commencement phasing condition applied to the residential development (P/2011/0925) was not discharged in advance of works commencing in respect of the sheltered flats on Fernham. It was not considered that enforcement action should be taken as commencement was broadly in line with the ODP. The funding derived from the sale of the site was secured and it did not appear that there was any demonstrable harm arising.*

*However, no further development on the site can proceed without this condition being discharged in view of the changes now proposed to the ODP. A condition was also imposed on all relevant consents to secure weatherproofing of the Stables within a defined time frame as this was the most at risk of the buildings. These weatherproofing works have not been commenced.*

*The applicants have not sought to challenge the conditions attached to the last planning permissions and listed building consent. The opportunity for challenge of those conditions has long since passed. It can be concluded that the applicants considered the conditions to be reasonable and acceptable.*

2. *Phasing Conditions in relation to the applications for change of use of the Mansion, Rotunda and Stables to hotel use.*

*The relevant 'phasing' conditions in relation to the applications for conversion of the Mansion, Rotunda and Stables to Hotel use are numbers 3 and 4 pursuant to P/2011/1020/PA and number 4 in relation to P/2011/1021/LB.*

*For information, the specific wording of the conditions and the reasons for imposing them is provided at Appendix A.*

*These applications involve a revised timetable and delivery strategy for implementation of the project and additional information to satisfy the Conservation Management Plan. This proposed approach changes significantly the anticipated guarantees around delivery.*

*Information to discharge these conditions was submitted days before the applications became time expired despite many requests to the applicants to address the matter, since it became apparent that timetables were not capable of being met.*

*Immediately following submission, works were carried out on site with the intention of preserving the permissions in relation to the future use of the Mansion, Rotunda and Stables in perpetuity.*

*If the pre commencement conditions are discharged, this could retrospectively legitimise the alleged start. This would need to be established via a Certificate Of Lawful Development.*

*If the LPA is unable to discharge the conditions, the applications to change the use of the Mansion to a hotel will become time expired, if the acceptability of these applications is not subsequently secured through a planning appeal.*

*3. Why changes to the Phasing Conditions require careful consideration.*

*The phasing conditions are important as they tie restoration of the heritage asset to the ODP. It is necessary to critically assess whether the revised phasing strategy delivers similar guarantees about securing restoration.*

*Condition 3 required the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (6th August 2012) unless otherwise agreed in writing with the LPA'.*

*Condition 4 required (inter alia) a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.*

*This information is required, as explained in the reason accompanying the condition, to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.*

*4. How does the Revised ODP compare to that referred to in the relevant conditions?*

*The revised ODP is of concern because it does not deliver the restoration of the Mansion, Rotunda, Stables and grounds in the time frame originally set out when permission was granted and there have been fundamental changes to the delivery strategy and financial position the decisions were predicated upon.*

*These matters have to be taken into account in dealing with conditions that seek*



approval for an alternative programme of works.

A. *Changes to Timeframe*

*In terms of time frame, the 'approved' ODP indicated that leases would be drawn down on the residential enabling development in January 2013 so the sites could be disposed of to realise funds for the works to commence on the restoration of the listed buildings.*

*Contractors would be appointed in April 2013 to start work on the Mansion in July 2013 and the Rotunda in October 2013 with completion in October 2014. The position in relation to the Stables was complicated by the need for bat surveys but a condition was imposed to ensure that the hotel use could not commence in the Mansion and Rotunda until the restoration of the Stables (for purposes ancillary to the hotel) was substantially complete.*

*The revised ODP, leaving the future of the Stables unresolved, would be at variance with the requirements of this condition.*

*There has been a significant delay in the start of the works. The update to the Conditions Survey 2014 (submitted to satisfy in part the requirements of condition 4) shows that this has led to a substantial increase in the number of defects in all of the listed buildings. This has increased restoration costs by 26% and any further delay in urgent repairs will exacerbate this.*

*The revised ODP which originally accompanied this application, involved a significantly extended time frame for delivery and the implementation of 'priority works' to the Mansion only (the Rotunda and Stables were to be mothballed).*

*These 'priority works' comprise a detailed schedule of remedial works.*

*Further, these works were only to be completed when the 'enabling development' in Zones C/D and A within the gardens was constructed and available for sale. This introduced an unacceptable delay to necessary protective works being carried out and carried a risk that the houses could be built without any works carried out to secure the future of the listed buildings.*

*Following several months of discussions the revised ODP has been amended to secure the implementation of all the 'priority works' to the Mansion prior to the sales of the first tranche of enabling development in Zones C/D (providing 22 homes) along with undefined protective works to the Rotunda and a contract for weatherproofing the Stables.*

*Whilst this is an improvement on what was originally submitted, it is all that can be guaranteed through the revised ODP. This revision explains that the works to convert the Mansion to a hotel will rely on the sales of residential dwellings*

*comprised within zones C/D and A along with possibly quite substantial loans. The works to restore/convert the Rotunda and Stables will rely on mortgaging the hotel when complete. The Applicant is not able to provide guarantees regarding the availability of this additional funding. This provides considerably less certainty than before that the listed buildings and Registered Garden will be repaired and renovated and as such fails to meet both the Council's planning requirements and Historic England's enabling development requirements.*

*It should be noted that when the decision to approve the scheme was granted in 2012 a significant proportion of the 'priority works, were considered unnecessary, except in relation to the Stables. The listed buildings are now more 'at risk' than before and the 'priority works' are now all necessary, which is a key consideration.*

*Whilst the improvements negotiated to the revised ODP will ensure that the remedial works to the Mansion might at least begin more promptly, that has to be balanced against the increased uncertainties over delivery of the whole project.*

#### *B. Changes to Development Strategy.*

*Much of the concern regarding delivery stems from the proposed changes to the development strategy. The approved ODP involved the upfront disposal of the enabling development to third party developer which would have secured substantial capital receipts of around £5m to be held in a jointly managed bank account. This would have acted as a 'bond' to secure delivery. It meant that enabling development could not commence until the money was secured and it would have allowed works to proceed quickly on protective works and towards delivering a restored Mansion, Rotunda and Stables. Prompt delivery is an important factor in dealing with remedial works to listed buildings, especially buildings of the quality of Oldway Mansion.*

*Whilst additional funding would have been needed to complete the overall project, the Independent Viability Appraisal (IVA) indicated that a significant proportion of the costs of restoration of the listed buildings would have been covered by the size of this receipt and having this 'banked' makes raising additional funding if required a less risky proposition.*

*The approach to delivery embodied in the approved ODP was validated through the IVA.*

*The revised ODP effectively deletes the bond as the applicants have decided to develop the housing plots themselves rather than dispose of them 'upfront'. This results in a significant delay in achieving any capital receipt as the funding is reliant on individual sales of completed dwellings. The link that existed between the enabling development and the prompt implementation of restoration works to the historic buildings is thus seriously weakened.*

### *C. Changes to the Financial Position.*

*The financial position in relation to the Oldway development is also relevant because condition 4 was imposed "To ensure the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site".*

*If the proposed development programme does not contain sufficient safeguards to ensure that restoration works are delivered promptly, the LPA has no assurance that delays will not lead to further increases in costs which could lead to a failure to complete the renovation works or pressure for additional dwellings on the site.*

*The factors which informed the IVA in 2012 have, as a result of the matters described earlier in this report changed, these are rising costs, further deterioration in the buildings and the fact that approximately £1.3 million of the £2.1 million secured from the sale of Fernham has been spent on fees. The IVA, which thoroughly assessed all development costs indicated that only £1.2 million was needed to cover the fee requirements for the entire project.*

*Historic England only recommended support for the scheme on the basis that the IVA confirmed the level of enabling development was the minimum needed to achieve the stated goal of restoration and was based on realistic and achievable financial modelling. Whilst this was demonstrably the case in 2012, and substantially underpinned Members' decision to support the scheme, confidence in its conclusions can no longer be assured given now many of the inputs to the assessment have changed.*

*In view of this, it is considered that the IVA should be re assessed to ensure that Historic England's enabling development tests can still be met and particularly that no further development will be required to fund the increased scale and costs of restoration works. The applicants question the need for this and have not confirmed they will cover the cost of such work (as is necessary to meet the Council's policy on viability assessment work).*

### *5. Other matters.*

*The timing of restoration of the grounds, as required by the phasing condition is not addressed other than being carried out in 'pockets of relevance' which is as described in the original applications.*

*The overall scheme for the conversion of Oldway to hotel use included a range of other requirements which formed part of the ODP such as replacement registry office, café, and tennis courts, restoration of the Grotto /historic gardens and new car parking. These matters are not addressed as part of this submission other than by reference to dates.*

*There are no particular planning reasons to insist on guarantees regarding delivery of the Registry office, tennis courts or café. However the issue of delivery around the historic garden and grotto is very much of concern.*

6. *Is there a way forward?*

*It was made clear to the applicants that for a revised ODP to be acceptable there needed to be a greater interleaving between the implementation of the enabling development and the delivery of the restored Mansion, Rotunda and Stables for hotel use and that this needed to be related to defined enforceable triggers rather than on a phasing programme that relied largely on dates.*

*There is no means of enforcing compliance unless key outcomes are tied to restrictions on occupation, sales, letting of contracts or there is a bond available to the LPA to effectively mitigate any default.*

*The applicants have been advised what key outcomes are essential and how these can be tied to defined stages in the implementation of the enabling development. Whilst some suggestions have been taken on board, such as completion of specified protective works prior to any sales of the new housing, this still provides no surety over the delivery of the hotel or the future of the Rotunda or Stables beyond a series of anticipated dates and hoped for outcomes.*

*The applicants do not appear to understand the Council's reservations, as expressed by officers, about securing delivery against dates as the previous ODP was partly reliant on a time frame for implementation.*

*They find it difficult to understand why a more robust stance should be taken now. There are three reasons for the LPA's stance.*

*Firstly, and most importantly, the approved ODP secured a substantial upfront capital receipt, nearly half of the necessary funding for the entire project and a significant proportion of the restoration costs of the listed buildings as confirmed by an IVA. It provides confidence that the scheme will deliver. In the absence of this comfort, it is necessary to be more vigilant over delivery and to try and secure a similar outcome by alternative means.*

*Secondly, the implications of relying heavily on an unenforceable timetable are now apparent from the current position on the site. The Development Agreement (through which the Council as landlord could exercise control) cannot now, for various legal reasons, be relied on.*

*Finally, the applicants have been advised that it would be useful to have a comparable understanding of the financial capacity of the scheme through a re run of the IVA given the changes in circumstances. The applicant is reluctant to*

*engage in this.*

*However, discussions have now stalled and there is a need to reach a determination on the matter given the lapse in time since submission of the details and lack of progress in negotiations.*

## *7. Conclusion.*

*Officers have secured improvements to the revised ODP which will ensure that all the 'Priority Works' are carried out prior to the sales of the first tranche (22 houses) of enabling development.*

*However against this has to be balanced the fact that it is only these works that can be guaranteed and conversion works to deliver the hotel use are not secured. The future of the Rotunda and Stables is also uncertain. As it was the rescue of these particularly at-risk buildings that underpinned the original approval this is clearly a retrograde position to be in. The delivery of restoration of the gardens is similarly unresolved.*

*The applicants will argue that the original ODP did not fully guarantee these matters however the availability of a substantial bond up front provided a significant degree of comfort.*

*This contrasts sharply with the position should the revised ODP be accepted. If this was approved the speed and certainty of delivery would be reduced; the link between the enabling development and delivery of the restored historic buildings would be eroded and the more dubious viability and uncertainty regarding funding sources could expose the Council to a risk of pressure for more enabling development to prop up the project at a later date.*

*These concerns could be mitigated by the applicants agreeing to a greater degree of interleaving between the restoration of the heritage asset (buildings and grounds) and the implementation of the enabling development and exposing the revised financial components of the scheme to a re-run of the IVA.*

*This was pivotal in informing Members views in relation to the original approval and any changes to costs, values or the development strategy to be used should be subject to a similar level of scrutiny.*

*The options available to Members are to:*

- Defer the decision on the matter and the applicant be asked to provide more comfort regarding delivery. It is however unlikely to produce a change in the outcome.*
- Refuse the application for reasons relating to uncertainty about delivery of*

*the project. However due to the timing of these submissions the applications for planning permission and listed building consent would become time expired unless the matter was subsequently approved on appeal. This has ramifications for the project as a whole.*

8. *Recommendation*

*Officers advise that the information submitted to discharge Conditions 3 and 4 pursuant to P/2011/1020 and condition 4 pursuant to P/2011/1021 in the form of a revised ODP should be refused because it fails to ensure that the scheme is delivered in its entirety in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site and it fails to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in line with policies HE1 and SS10 of the Adopted Torbay Local Plan.*

**Relevant Policies**

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**Application Number**

P/2016/0140

**Site Address**

177 Roselands Drive  
Paignton  
TQ4 7RN

**Case Officer**

Gary Crawford

**Ward**

Goodrington With Roselands

**Description**

Extension to garage with a tiled pitched roof and conservatory.

**Executive Summary/Key Outcomes**

The proposal is for a wrap-around single storey pitched roof extension to the rear of the existing garage and extending along the rear elevation. The pitched roof would extend over the existing flat roofed garage to form a dual pitched roof.

The proposed extension would increase the size of the garage and provide a conservatory at the rear of the property.

The proposal is considered to be acceptable in this location and without any overriding detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality. Consequently the proposal meets Local Plan policy requirements, specifically Policies DE1 (Design), DE3 (Development Amenity) and DE5 (Domestic Extensions).

**Recommendation**

Approval

**Statutory Determination Period**

8 weeks, the determination date was 30th April 2016. However, this has been extended until 11th May 2016 following a SRM at which the Ward Councillors decided that the application should be determined by the Development Management Committee.

**Site Details**

The application site is a detached two storey dwelling located on the eastern side of Roselands Drive. The property has an existing attached flat roofed side garage and rear patio area. The ground levels on the site slope steeply downwards to the north and east, and consequently the application site is situated at a higher level than the neighbouring properties in Lancaster Drive.

### **Detailed Proposals**

The proposal is for a wrap-around single storey pitched roof extension to the rear of the existing garage and extending along the rear elevation of the main house. The pitched roof would extend over the existing flat roofed garage to form a dual pitched roof. The proposed extension would be 2.25m in depth and, would abut the side boundary with Nos. 2 and 4 Lancaster Drive, as does the existing garage. The proposed dual pitched roof would be 4.2m in height at its highest point. The proposed extension would enlarge the existing garage and form a new conservatory at the rear.

### **Summary Of Consultation Responses**

*Drainage Engineer:* Due to the topography of the site, the use of soakaways would not be feasible and the surface water should be discharged to the combined sewer system at a controlled rate. As Torbay is a Critical Drainage Area, any surface water discharge rate from the site to the combined sewer must be limited to Greenfield run off rate for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 30% for climate change.

The applicant must demonstrate that the surface water drainage design would not result in any increased risk of flooding to properties or land adjacent to his development for the critical 1 in 100 year storm event plus 30% for climate change.

### **Summary Of Representations**

Three representations of objection have been received. Issues raised:

- Loss of light
- Loss of privacy
- Visual impact

Ward members requested that a site review meeting be held, at which they decided that the application should be determined by the Development Management Committee. These representations have been sent to Members electronically for their consideration.

### **Relevant Planning History**

P/2008/1045: Single storey extension at side and rear. Permitted 2/9/2008 but not implemented.  
P/2009/0111: 2 storey extension at side; single storey extension at rear. Refused 23/3/2009.

### **Key Issues/Material Considerations**

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



1. Impact on the amenity of neighbouring properties
2. Impact on the character and appearance of the existing property and streetscene
3. Flood risk

### **1. Impact on the amenity of neighbouring properties**

It is noted that the proposed extension has been reduced by 1m in terms of its depth and 0.2m in terms of its height in comparison with the previously approved extension (P/2008/1045). Whilst the proposed extension may result in some loss of light to the rear gardens of the neighbouring properties in Lancaster Drive, given the orientation of No.177 Roselands Drive due south east of the properties in Lancaster Drive and the 7.1m height of the host property, it is deemed that the proposal would not result in a significantly worse impact in terms of loss of light and overshadowing to the properties in Lancaster Drive than the existing situation.

In terms of loss of privacy, there are views to the rear gardens and rear windows of both Nos. 4 and 6 Lancaster Drive from the existing rear patio at No. 177 Roselands Drive. The proposed extension would not result in any direct overlooking impacts to Nos. 4 and 6 Lancaster Drive, and given the existing first floor windows in the rear elevation of No.177 Roselands Drive, it is considered that the proposal would not result in any worse overlooking or loss of privacy impacts to neighbouring properties than the existing situation. Given the 19m distance between the rear windows of the proposed conservatory and the property to the rear (No.14 Lancaster Drive), the existing rear patio at No.177 Roselands Drive and the drop in levels to No.14 Lancaster Drive, it is deemed that the proposal would not result in any worse overlooking or loss of privacy impacts upon No.14 Lancaster Drive than the existing situation.

The proposed extension would be located adjacent to the rear boundaries of Nos. 2 and 4 Lancaster Drive and set at a higher level than the properties in Lancaster Drive, and would result in some overbearing impacts upon the rear gardens of the neighbouring properties in Lancaster Drive. However, given the proximity of the main house at No.177 Roselands Drive to the rear gardens of Nos. 2 and 4 Lancaster Drive and the 7.1m height of the host dwelling, the single storey nature of the proposed extension and that the height of the proposed extension is 0.2m less than the previously approved extension (P/2008/1045), it is considered that, on balance, the proposal would not result in an unacceptable overbearing impact upon the neighbouring properties in Lancaster Drive.

The proposal is therefore deemed to have an acceptable impact upon the amenity of neighbouring properties.

### **2. Impact on the character and appearance of the existing property and streetscene**

The proposed extension is considered to be of an acceptable scale and design,

and is smaller in terms of its depth and height than the previously approved scheme (P/2008/1045) which was not implemented. Whilst the proposed pitched roof over the garage would alter the character and appearance of the host property, given the existing pitched roof form of the host property and, the existing pitched roofed side extension at No.180 Roselands Drive and existing pitched roofed garage at No.184 Roselands Drive, it is deemed that the proposal would not result in any significantly adverse impacts on the character and appearance of the existing property or streetscene.

### **3. Flood risk**

As the application site is located within a Critical Drainage Area, a condition should be included with any planning permission which states that any surface water discharge rate from the site to the combined sewer must be limited to Greenfield run off rate for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 30% for climate change. Furthermore, in order to comply with the requirements of the Critical Drainage Area, the development must not result in any increased risk of flooding to properties or land adjacent to his development for the critical 1 in 100 year storm event plus 30% for climate change.

### **Conclusions**

In conclusion, the proposed development would not unacceptably harm the appearance and character of the area or have an unacceptably adverse effect on the amenity of nearby occupiers, therefore the proposed development is considered to be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations.

### **Relevant Policies**

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**Application Number**

P/2016/0125

**Site Address**

6 Quantocks Road  
Torquay  
TQ2 6UH

**Case Officer**

Mr Robert Pierce

**Ward**

Cockington With Chelston

**Description**

Single storey extension, entrance porch & integral garage

**Executive Summary/Key Outcomes**

The site comprises a Gable fronted detached bungalow with a flat roofed garage which is set back to the rear. It stands on a level site and is one of a row of similar bungalows along the south side of Quantocks Road. The property was built in the early 1960's and forms part of the Broadpark Estate, the conditional planning approval for which removed permitted development rights (Part 1) for all 500 dwellings.

The proposal is to remove the detached garage and form a new side extension with an intersecting hipped roof linking into the existing bungalow. If permitted development rights had not been removed then the proposal would not have required planning permission.

The proposal is considered to maintain the domestic character and appearance of the bungalow and will result in a building which will sit comfortably within the street scene. There would be no discernible impact upon neighbour amenity. The proposal will result in the loss of some onsite parking but ample provision for at least 2 cars will remain on the existing driveway.

The application is included on the agenda as the result of a Site Review Meeting which was held on 21st April 2016.

**Recommendation**

Approval

**Statutory Determination Period**

8 Weeks 19th April 2016. Determination of the application has exceeded this target due to the request from ward councillors for a site review meeting and the subsequent decision to determine the application at the Development Management Committee.

### **Site Details**

Gable fronted detached bungalow which has a flat roofed single storey garage which is set back to the rear. It stands on a level site and is one of a row of similar bungalows along the south side of Quantocks Road. The property was built in the early 1960's and forms part of the Broadpark Estate, the planning approval for which removed permitted development rights (Part 1) for all 500 dwellings.

### **Detailed Proposals**

Permission is sought to demolish the existing detached garage and form a new extension to the side. The plans indicate that the extension would extend out towards the side where it would be slightly set off the boundary with 4 Quantocks Road. It would be set back from the front of the property by approximately 5 metres and would extend out beyond the rear elevation by 1.8 metres. The extension would have an intersecting hipped roof which would cut into the slope of the roof to the host property with a matching ridge height. As a result the extension would present a 9.5 metre long blank elevation with an eaves height of just under 3 metres facing No 4 Quantocks Road. The external materials would match the existing property with boundary treatment comprising a 1.8 metre high timber fence. The resulting accommodation would create a new entrance porch, store room to the front with facing garage door and a new dining room to the rear.

### **Summary Of Consultation Responses**

*Drainage Engineer:* Observations Awaited

*South West Water:* Needs to be informed if any works are over or within 3 metres of a public sewer. The applicant will need to demonstrate that the prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable.

*Green Infrastructure Coordinator:* Probably a low likelihood of encountering bats as although it's quite close to woodland (<200m) there isn't any weatherboarding or hanging tiles. Based on this, and the information provided by the agent, I'd tend to say that no assessment is required.

### **Summary Of Representations**

Objections received from neighbours to the side and rear. Main issues raised include, loss of privacy (potential to put rooflights in the roof), roof of extension more visible from the rear, visually out of keeping with the established street scene, loss of light to kitchen and bathrooms to No 4, proximity to mains sewer and Party Wall Issues (Not a Planning Matter). These representations have been sent electronically for Members consideration.

### **Relevant Planning History**

SL/6262/11027D: Residential Development (500 dwellings) Approved 16th February 1961

P/2012/0374 : Removal of existing garage at side. Replace with new extension to side and rear. Approved 31.05.2012.

### **Key Issues/Material Considerations**

Key issues are considered to be the visual impact on the streetscene, any impact on neighbouring living conditions and loss of onsite car parking.

#### **Visual impact -**

The bungalows along the south side of Quantocks Road are all very similar in appearance with gabled front elevations and flat roofed garages set back to the rear. Number 4 has recently been extended to the side and this has introduced a variation to the uniformity of the street scene. The proposed extension will still be set back from the front of the property by 5 metres and it will retain the appearance of a garage when viewed from the front. The introduction of an intersecting hipped roof over the extension is considered to be visually acceptable and would not result in an unduly over dominant addition within the street scene.

As such, the proposal is in accordance with Policy DE5.

#### **Amenity issues -**

The extension will be slightly set off the boundary with No 4 Quantocks Road and will have an eaves height of just under 3 metres. An objection has been received from the owner of No 4 that this will result in loss of light into the bathroom and kitchen. In respect of this, the side of the existing garage already runs along 6 metres directly onto the boundary with No 4. The proposal would result in an additional 1.6 metres to the front and rear of the space already occupied by the garage and would also be marginally set back off the boundary. On balance therefore it is not considered that this additional area of side elevation is sufficiently detrimental to the light coming into the bathroom and kitchen of No 4.

As such, the proposal is in accordance with Policy DE3.

#### **Car Parking -**

The proposal will result in a loss of off-street car parking however there will still be more than adequate car parking space within the frontage of the property, as the existing driveway is long enough to accommodate at least 2 cars.

As such, the proposal is in accordance with Policy TA3.

#### **Flood Risk**

In common with the remainder of Torbay, the site is within a critical drainage area. The proposal is deemed acceptable in terms of flooding, subject to a

condition to secure the submission and approval of a detailed design for a sustainable drainage system before work commences on site.

As such, the proposal is in accordance with Policies ER1 and ER2

**S106/CIL -**

Not applicable

**Conclusions**

The proposed extension will result in an acceptable addition to the property that does not harm the character or appearance of the area, will not have any adverse impact on neighbour amenity and will retain sufficient on site car parking. The proposal is consistent with the objectives of Policies DE1 (Design), DE3 (Development Amenity), and DE5 (Domestic Extensions), TA3 (Car Parking), ER1(Flood Risk)and ER2 (Water Management), as such it is recommended for planning approval subject to conditions to secure the following:

Sustainable drainage system

**Condition(s)/Reason(s)**

01. No development shall take place until the following information has been submitted to and approved in writing by the Local Planning Authority: (1) Evidence that trial holes and infiltration tests have been carried out on the site to confirm whether the ground is suitable for a soakaway(s). Trial holes and infiltration tests must be carried out in accordance with Building Research Establishment Digest 365. In addition, evidence demonstrating that the use of a soakaway(s) at this location will not result in an increased risk of flooding to surrounding buildings, roads and land. This should take into consideration re-emergence of surface water onto surrounding properties after it has soaked away. In the event that the evidence submitted under (1) above demonstrates that the ground conditions are suitable for a soakaway(s) and will not result in an increased risk of flooding to surrounding buildings, roads and land: (2) Detailed design of the soakaway(s) in accordance with Building Research Establishment Digest 365, including how it has been sized and designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change.(3) Details of the surface water drainage system connecting the new kiosk to the soakaway(s), which must be designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change. In the event that the evidence submitted under (1) above demonstrates that the ground conditions are not suitable for a soakaway(s) or will result in an increased risk of flooding to surrounding buildings, roads and land: (4) Evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. The coffee kiosk shall not be utilised until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests to adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 (Flood Risk) of the Torbay Local Plan 2012-2030 and paragraph 103 of the NPPF.

02. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no windows, doors or other openings, other than those shown on the approved plans, shall be constructed with the side (east) elevation of the development hereby approved.

Reason: In the interests of privacy of the neighbouring property, in accordance with Policies DE3 and DE5 of the Torbay Local Plan 2012-2030.

**Relevant Policies**

DE1 - Design

DE3 - Development Amenity

DE5 - Domestic extensions

TA3 - Parking requirements

ER1 - Flood Risk

ER2 - Water Management

# Agenda Item 9

## Application Number

P/2016/0277

## Site Address

63 Babbacombe Downs Road  
St Marychurch  
Torquay  
TQ1 3LP

## Case Officer

Mr Scott Jones

## Ward

St Marychurch

## Description

Demolition of existing building. Formation of 14 Apartments with parking and 2 restaurants/cafe (A1, A3, A4 and A5 use categories)

## Executive Summary/Key Outcomes

The site is a prominent corner plot off Babbacombe Downs Road at the southeastern end of Babbacombe Downs, close to the Babbacombe Theatre and near to the junction with Beach Road. The site currently holds a heavily extended Victorian Villa, which has three storeys with stucco/rendered walls under a flat roof. The site is in the Babbacombe Downs Conservation Area and is also located in a Core Tourism Investment Area, as identified within the Local Plan.

The application is to demolish the existing building and replace it with a four-storey render and glass building, which will provide 14 apartments and two commercial units. 17 car parking spaces will be provided within an underground parking area served off a new access and there will be 3 visitor parking spaces in front of the building served off the existing corner access point.

To meet key Local Plan policy requirements the proposal must respond to tourism policies TO1 (Tourism, events and culture) and TO2 (Change of use of tourism accommodation and facilities) of the Local Plan, which principally outline support for development that improves and provides new tourism facilities with a focus on Core Tourism Investment Areas.

The proposal must also prove that it sits comfortably in relation to the character of the area in order to maintain or enhance character and appearance of the Babbacombe Downs Conservation Area. It should also protect the setting of any nearby listed buildings, in-line with the aims of Local Plan Policies SS10 and HE1.

In regard to the two central issues highlighted above the proposal is considered inconsistent with the aims and objectives of tourism policies TO1 and TO2.



There will be a loss in terms of holiday accommodation and a diminished provision of commercial floor space that is supportive of tourism activity in the area. It fails to demonstrate that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes.

In regard to design and impact upon heritage assets the application is considered inconsistent with the aims and objectives of Policies SS10 and HE1. The scale and form of development is considered to relate poorly with its surrounds to an extent that presents harm to the character and appearance of the Babbacombe Downs Conservation Area. It is also considered harmful to the setting of the nearby Babbacombe Cliff Grade 2 Listed Building where the proposed building will be prominent in the skyline to the northwest of this building.

There are further areas of concern. The access to the proposed underground parking court is considered inadequate as it fails to achieve the minimum requirement of a 1 in 8 gradient. There is also an absence of geotechnical data that demonstrates that the excavation necessary to achieve the sub-level parking can be achieved. The proposal also presents a poor residential environment for future occupiers in terms of proximity to commercial uses and by presenting inter-looking between certain units. The proposal also fails to demonstrate that the redevelopment will not increase the risk of flooding elsewhere in the context of the wider Critical Drainage Area designation.

### **Recommendation**

It is recommended that the application is refused due to the loss of holiday accommodation and the diminished provision of commercial floor space supportive of the tourism character, in what is a Core Tourism Investment Area, for the harm it causes to the character and appearance of the Babbacombe Downs Conservation Area and the setting of the Babbacombe Cliff Listed building, for the poor residential environment proposed in terms of potential conflict between uses, poor outlook and arrangement between certain units, and due to the unsatisfactory access to the underground parking and uncertainty that the level of excavation necessary can be achieved. The proposal also fails to provide certainty that there would be no increase in the risk of flooding in the absence of detail in this regard.

### **Statutory Determination Period**

As a major application this has a 13 week determination period expiring on the 23rd June 2016.

### **Site Details**

The site is 63 Babbacombe Road, which is a prominent corner plot on the southeastern end of Babbacombe Downs with views over the Downs, the Babbacombe Theatre and the junction With Beach Road. The building has previously commercially operated as "Churchills" and "Wilsons".

The site currently holds a single, relatively large, three-storey building with rendered walls under a flat parapet roof. Elevations are broken up by render bands and windows and doors are largely framed with contrasting quoin detailing and prominent cills, which adds interest. The window stock in the two public facing elevations is largely Upvc sliding sash with casement windows predominant in the secondary elevations. There is an area of hardstand that provides parking spaces to the front of the building aside some outdoor terraced areas.

The site sits in the Babbacombe Downs Conservation Area and is identified as a key building and part of an important building group within the Babbacombe Downs Conservation Area Appraisal. The site sits in part of the conservation area that is generally characterised by detached seaside villas which front Babbacombe Downs Road that are mostly hotels. The site is also in a designated Core Tourism Investment Area, as identified within the Torbay Local Plan (2012-2030).

The lawful use of the building is considered to be a bar/restaurant with holiday accommodation in the uppermost floor. The application states that the buildings current use is a restaurant cafe bar and residential (3 units).

### **Detailed Proposals**

This application is an outline proposal to demolish the existing building and provide 14 apartments, parking and two commercial units for A1/A3/A4/A5 use purposes (retail/restaurant or cafe /drinking establishment/hot food take-away).

The outline application seeks to fix access, appearance, layout and scale, with only landscaping a reserved matter.

The proposed building is four storeys plus an underground parking level. The building height will be approximately 12 metres and the form of the proposal will be somewhat modern, with large elements of glazing within the two principal elevations that front the highway. The walls will be rendered, which is more evident on the secondary elevations where there is less glazing, and there will be hipped roof elements providing visual breaks between floors. There is a small degree of stepping-back as the building rises, which creates some balcony space for the apartments.

The ground floor layout shows the provision of two commercial units with outdoor terrace areas fronting Babbacombe Downs and one three-bed residential flat. Also at ground floor three visitor parking spaces are also provided off the existing access near to the corner of the site. The first floor layout shows the provision of six flats, each with two bedrooms. The second floor details four flats, of which two are two-beds and two are three-beds. The third (uppermost) floor details the provision of three flats, two of which are two-beds and one being a three-bed unit. The floor areas of the residential units are between 66 and 110 square

metres and the commercial units are each approximately 150 square metres in size.

A new vehicular access is proposed from the east with ramped access down to an underground parking court that shows 16 car parking spaces and one garage space.

There is no external amenity space proposed within the curtilage of the building.

### **Summary Of Consultation Responses**

*Conservation and Design Team:* Recommend refusal. The eastern end of Babbacombe Downs Road is characterised by 2-storey buildings, as is the southern return to Babbacombe Road. The current building is notable but not overly intrusive despite its third storey and its form links the building to its neighbours. The proposal is considered an overlarge, ill-massed, structure of alien material that does not relate to the character of the conservation area. The current building is recoverable.

*Historic England:* Do not support the proposal. The current building has been subject to additions that have increased its mass and weakened its architectural form, however it still forms a positive contribution to the reinforcing the local uniformity of as a detached rendered villa. The proposal will present a significant increase to the massing of the building that is out of place with the context, whilst the design approach conflicts with the character of buildings in the area. The proposal will present harm, having an adverse effect on the character and appearance of the conservation area. At present clear and convincing justification for the loss of the building has not been provided. Recommend that the applicant seeks further advice from a Design Review Panel who could provide guidance on how to best develop a scheme to reflect the existing character in a contemporary fashion.

*Drainage Manager:* As Torbay is a Critical Drainage Area the applicant must investigate the ability to provide soakaways and only when conditions are unsuitable should the surface water be drained to a Public Sewer. If soakaways cannot be achieved discharge to a Public Sewer at a controlled Greenfield rate for the 1 in 10 year storm event, with attenuation to cater for the 1 in 100 year storm event, must be achieved. Detail on the above is absent and must be achieved before the grant of permission.

*Community Protection Officer:* Concern is raised in regard to residential amenity in terms of conflict between commercial and residential uses.

*Strategic Policy and Transport (incorporating Highways):* The proposal could generate significant amounts of movement. More information is required in regard to the existing and proposed traffic generation, assessment of access arrangements, more detail on cycle storage, electrical charging etc, and where

there are opportunities to enhance walking and cycling facilities. Recommend a Transport Statement proportionate to the scale of development is necessary in order to consider the scheme. In regard to employment and tourism the site is in a Core Tourism Investment Area and an assessment of the effect on these is should be provided. In regard to the underground parking the access should be no less than 1 in 8 and have a minimum clearance of 2m (6'6"). Consideration should be given to the need to ventilate this area.

*Police Liaison Officer:* Comments provided on design elements.

*Natural England:* The Babbacombe SSSI does not represent a constraint in determining the application as the application will not, as submitted, damage or destroy the interest features for which the SSSI has been notified.

*Building Control Officer:* Building regulations may have implications upon the internal layout.

*Environment Agency:* Consultation response awaited.

### **Summary Of Representations**

Five letters of objection have been received which raise concerns about introducing a residential block within a key corner site within a key tourism area, the lack of evidence to support the notion that the current tourism use is not viable, impact on the highway network and pedestrians, inadequate parking for the mix of uses, poor design that is unreflective of the character of the area and harmful to the Downs, overdevelopment of the site, and the precedent it would set for similar large scale redevelopment along the Downs. These have been sent electronically for Members consideration.

### **Relevant Planning History**

P/1992/0525: Alterations And Use Of Ground Floor As Public House, First Floor As Public Restaurant And Second Floor As 7 Holiday Letting Bedrooms (As Revised By Plans Dated 27/05/92 And Letter Dated 28/05/92) - Approved with condition for upper floor hotel bedroom accommodation use.

P/1992/0904: Change Of Use At Second Floor Level From 7 Hotel Bedrooms To Lettable Holiday Accommodation Containing 3 Bedrooms And Shared Facilities - Approved at appeal with condition that the residential accommodation shall only be used for holiday purposes.

### **Key Issues/Material Considerations**

The key issues are;

1. tourism impact,
2. the impact on the character and appearance of the Conservation Area and the setting of nearby listed building/s,
3. the quality of the residential accommodation to be provided,
4. the impact on neighbour amenity
5. drainage and flood risk, and
6. Travel, parking and movement

Each will be addressed in turn.

### **1. Tourism Impact**

The application site is located within a Core Tourism Investment Area (as designated within the Torbay Local Plan) and policies TO1 and TO2 of the Local Plan apply.

Policy TO1 outlines that the Council wishes to see the quality of tourist accommodation improved within Torbay with a wider range of new and refurbished facilities and services and that such aims should be achieved through (in part) the retention and improvement of high quality tourism and leisure accommodation in sustainable and accessible locations. There is a particular focus on Core Tourism Investment Areas. The policy seeks to maintain and enhance the most important tourism areas, the Core Tourism Investment Areas, with the intention to ensure the retention and improvement of sufficient high quality accommodation and attractions in order to provide a critical mass needed by a premier resort.

Policy TO2 states that there will be a presumption that the tourism role of premises should be retained and enhanced commensurate with their contribution to the area's tourism offer. It furthers that the change of use of accommodation or facilities to non-holiday uses will only be permitted where such accommodation lacks an appropriate range of facilities and scope for improvement, and where it can be demonstrated that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes.

It is also relevant to note that the 'Turning the Tide' Tourism Strategy 2010-2015 identifies Babbacombe as having specific appeal and it proposes that Babbacombe is seen as a sub destination that currently and will continue to strengthen the English Riviera brand.

The application site is located directly off Babbacombe Downs Road on a prominent corner plot with a direct frontage over Babbacombe Downs and the coast. It sits as part of wider frontage development to Babbacombe Downs that has an overriding holiday character in a unique location. Properties in the vicinity of area are predominantly in tourist uses and the area retains it's distinctive tourism character. The building has historically operated as a hotel with bar and

restaurant facilities although the application cites that the current use of the building is a mix of restaurant/cafe/bar and residential. In the absence of evidence to the contrary, the lawful use of the building is considered to be commercial restaurant/pub use and holiday accommodation over. The planning history supports this assumption with no pertinent history since two applications were submitted in 1992 for restaurant/pub and holiday accommodation use. It is noted that there is anecdotal evidence online through trip advisor that some form of holiday occupancy operated in the building as recently as 2010, which is relevant.

Considering the points above, the lawful use of the building is considered one of a restaurant and bar with holiday accommodation on the upper floor and the tourism impact of the proposal is considered in this context.

In the context of the above it is considered that the proposal would reduce holiday facilities and remove holiday accommodation in the Core Tourism Investment Area. This is considered contrary to policies TO1 and TO2 of the Torbay Local Plan. The planning history indicates that 7 holiday bedrooms were approved in the building in 1992 and a subsequent application for the conversion of the second floor to from 7 hotel bedrooms to holiday accommodation containing 3 bedrooms and shared facilities was approved at appeal. The inspector cited that the works to provide this accommodation were complete when considered. The submitted floor plans indicate that there are currently 3 residential units of accommodation arranged within the second floor and part of the first floor, which is not aligned with either application. The proposal would result in the loss of 396m<sup>2</sup> of commercial floorspace within the building. Currently the majority of the floorspace of the building provides facilities that contribute to the tourist character of the area. The proposal would result in the provision of two commercial units at ground floor level and the remaining floorspace being used for residential purposes, which would significantly reduce the contribution from this property to the vibrant tourist character of the area.

Policy TO1 seeks to focus on Core Tourism Investment Areas as areas to seek the retention, improvement and creation of high quality tourism facilities and accommodation. The proposal reduces the provision of commercial floor space supportive of the holiday area and presents a loss of holiday accommodation and replaces it with non-holiday accommodation. Both of these trends are considered inconsistent with the aims and objectives of Policy TO1 which seeks development that strengthens rather than weakens the holiday offer with Core Tourism Investment Areas.

Policy TO2 outlines that the conversion of holiday accommodation or facilities to non-holiday uses will only be permitted where it lacks the appropriate range of facilities and where it can be demonstrated that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes. The application has not demonstrated that a tourism use could not be provided

on the site, which is well positioned in a unique location in an area that has a well-established holiday character.

Tourism is an important industry in Torbay which makes a significant contribution to the local economy. The Council has reviewed its policy on protecting the tourist character of the resort in recent years. The Council's strategy is to focus on the need to retain and enhance good quality modern facilities in order to maintain the area's status as a premier resort. . Through the designation of Babbacombe Downs as a core tourism area the Council has identified this area as being important to the resort and an area where there will be a particular focus on the retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation.

In line with the comments above it is considered that the application conflicts with Policies TO1 and TO2 of the Local Plan with regard to loss/weakening of tourist facilities and accommodation within a Core Tourism Investment Area.

## **2. Impact on the Character of the Babbacombe Downs Conservation Area and setting of nearby listed building/s**

In terms of policy guidance the following national and local policies are relevant.

Paragraph 131 of the National Planning Policy Framework (NPPF) states that in determining planning applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets, the positive contribution that conservation of heritage assets can make to sustainable communities and the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 132 of the NPPF states that great weight should be given to a heritage asset's conservation and that as heritage assets are irreplaceable any harm or loss should require clear and convincing justification.

And Paragraph 137 cites that Local Planning Authorities should look for opportunities to enhance or better reveal the significance of heritage assets.

At a local level policy SS10 (Conservation and the historic environment) and HE1 (Listed buildings) of the Torbay Local Plan (2012-2030) seeks to support proposals that enhance heritage assets or their setting.

In terms of context the Babbacombe Downs Conservation Area Appraisal describes that most buildings within the conservation area remain unlisted but very many have qualities that merit attention, either by virtue of their group value or their architectural detail or key components. It goes on that the majority are situated on Babbacombe Downs Road (Para 4.1.4). The appraisal document also mentions the handsome stucco or rendered frontages are a feature of

Babbacombe Downs Road (Para 4.2.1) and the predominant building material (Para 4.3.1). The Downs development is also mentioned within Section 6 (The setting and features of special importance) where it is mentioned that the development facing the sea, much of which remains significantly unaltered, with overall frontage detail, special arrangement and roof profiles mentioned.

The proposed building is not considered to respect the overall character and appearance of the conservation area and thus conflicts with the policy guidance above. The reasons for this are outlined below.

The proposed building will utilise a loosely similar footprint to the existing (heavily extended) building however there is an outward extension of these two principal building lines towards the public realm. This enlargement of the footprint, with only a limited extent of upper floor recession through the building, will result in a significant increase in the mass of the building. The existing building presents a principal eastern flank to Babbacombe Downs Road that is 11m deep and set approximately 9m in from the edge of the plot (this excludes the single storey ground floor flat roofed function room that extends to the near edge of plot). This established principal flank end (that is 9m from edge of plot) sits uniformly with the wider established building line that includes the buildings from the south and currently offers some visual relief to the corner which is prominent in the locality. The additional bulk and proximity to the edge of plot will be detrimental upon the visual amenities of the area. In regard to the main northern frontage again the proposed building encroaches forward where the building is 5-6m wider than existing. The additional length and depth of the building, in the form proposed, will present a significant increase in the mass of building on the site, presenting a far more dominant building on the plot that relates poorly to the established pattern and character of the townscape.

In regard to the building's design the two principal outward facing elevations are largely glazed with floors delineated by small hipped canopy elements and in places small recessions to the building line. The elevations that do not directly front the public realm contain less glazing and the rendered wall element becomes more apparent. The accompanying design and access statement states that the building is seeking to be a landmark building with its own distinctive and prestigious character. As previously detailed the conservation area appraisal highlighted that development along Babbacombe Downs retains a pleasant character that by virtue of the grouping is self-reinforcing, and that there is a predominant building form and materials. The design approach is considered to conflict with the character of buildings in the area and is considered to present non contextual development that responds poorly to the constraints of the area.

By virtue of the increase in massing of the building and its form, which is of a contemporary design that does not respond to the context, the proposal is considered harmful to the character and appearance of the Babbacombe Downs



Conservation Area.

In addition to the above the proposed building, which will sit prominently in the skyline on higher land to the northwest of the Babbacombe Cliff, a Grade 2 Listed Building off Beach Road, it is considered harmful to the setting of this listed building.

It is noted that Historic England has objected to the proposed development on the basis of the significant increase to the massing of the building and a conflict of the design approach with the established character of the area. HE have assessed the proposal and concluded that it will result in harm to the heritage asset by reason of an adverse effect on the character and appearance of the conservation area.

The proposal, which increases the mass of building on the plot which contains a heavily extended Victorian Villa, also fails to respond to Policy TO2 of the Local Plan, which states that where a change of use away from tourism is permitted, there will be a requirement to restore buildings or land to their original historic form and where appropriate reinstate amenity space lost through overdevelopment as a holiday use. Para 6.1.2.20 furthers that in cases it may be appropriate to replace with a more in-keeping buildings however it cannot be assumed that a like-for-like replacement will be acceptable if the site has been overdeveloped. The proposal, which actually increase the size and mass of building on the plot, fails to respond to the guidance contained within Policy TO2 in regard to responding to the context of a Villa plot where there would have been spacious and open setting for the original building.

By virtue of the above the proposal is considered contrary to Local Plan Policies SS10, HE1, DE1 and TO2 of the Local Plan. The proposal is also considered inconsistent with national guidance (NPPF) as it fails to promote and reinforce local distinctiveness and respond to the historic environment (para 60-61), and fails to take the opportunity to enhance or better reveal the significance of the heritage asset (para 137). It is also considered to conflict with the premise that any harm to a heritage asset should have clear and convincing justification as heritage assets are irreplaceable (para 132).

### **3. Quality Of residential accommodation to be provided**

The Local Plan includes detailed requirements in relation to the quality of residential schemes in terms of amenity, layout and space standards. Policy DE3 (Development amenity) seeks that all development should be designed to provide a good level of amenity for future residents or occupiers.

The scheme provides for 14 new 2 and 3 bed apartments on the site, along with commercial floor space. One apartment will sit at ground floor adjacent to the commercial floor space. The remaining 13 apartments will sit above on the upper three floors.

Due to the lack of space around the building, the amenity space that is provided is almost exclusively in the form of small balconies and terraces. There is however good access to the Downs in terms of nearby public open space.

The internal space and living environments are generally satisfactory in terms of general living space and natural light to rooms and outlooks. There is however concern in regard to the quality of the residential environment where apartments on the southern side of the building will have habitable rooms with single aspects across a narrow courtyard. This is likely to present inter-looking at close proximity and an undesirable living environment where windows are likely to be permanently obscured with blinds or curtains to retain privacy, which in turn impacts the quality of the internal space by removing any foreseeable outlook or natural lighting for occupants.

There is also concern in regard to introducing an arrangement where residential units sit aside and above the commercial units proposed, in terms of the potential for noise nuisance and general disturbance. Babbacombe Downs is a relatively busy tourism environment, particularly in the summer, and the frontage is lined commercial drinking and eating establishments at ground floor. The introduction of residential units is considered likely to present a conflict with these established uses and the proposed units within the ground floor of this scheme, in terms of general noise and disturbance from operations and use. This conflict is unlikely to exist, certainly to such an extent, where there is holiday occupancy in situ rather than non-holiday residency, due to the temporary nature of occupancy and also the expectancy of some degree of noise and activity whilst staying in such a location.

Having considered the context the residential environment is considered contrary to policy DE3, due to the likely conflict between the proposed and existing commercial operations, and the relationship between certain apartments in terms of inter-looking creating a poor outlook for rooms. The proposal is considered contrary to Policy DE3.

#### **4. Impact on the amenity of adjacent occupiers**

Local Plan Policy DE3 also outlines that development should not unduly impact upon the amenity of neighbouring and surrounding uses. Such impacts are considered below.

The adjacent property to the south currently benefits from an L-shaped garden along its frontage which returns back into the site towards a secondary building line, close to the joint boundary with the application site. This area and the rooms set off it benefit from a relatively open aspect as the adjacent built form within the boundary of the application site is contained to single storey. The proposal will replace this single storey element with a four storey building in close proximity to the joint boundary. The impact in the amenity space and the adjacent rooms is likely to be demonstrable in terms of loss of light, outlook, and

also to a degree privacy from the associated outdoor terrace areas.

The proposal is considered harmful to the amenity of the neighbouring use to the south due to the reasons above, contrary to Local Plan Policy DE3.

### **5. Drainage and flood risk**

The majority of land in Torbay has been designated a Critical Drainage Area (CDA) by the Environment Agency. New Local Plan Policies align with the CDA designation and the sensitivity of surface water management within Torbay and detail that development must maintain or enhance the prevailing water flow on-site. Policy ER2 iterates that all development should minimise the generation of increased run-off and outlines a drainage hierarchy.

Detailed drainage proposals must now form part of planning application submissions accordingly. These should investigate the practicality of sustainable drainage systems as a first priority, by undertaking infiltration testing of ground conditions on the site.

In this case the application states that the development will connect to the Public Sewer.

No further information or justification is provided why infiltration testing has not been carried out and how the proposal responds to the drainage hierarchy outlined within the Local Plan.

Therefore, officers consider that insufficient information has been provided to demonstrate that the proposal will not result in additional flood risk elsewhere.

The application should therefore be refused in accordance with Policy ER1 and ER2 of the new Local Plan, and paragraphs 102 and 103 of the NPPF.

### **6. Highways, parking and access**

The proposal seeks to provide 17 car parking spaces within an underground car parking court from a new access formed off the southeastern border, supplemented by 3 ground floor car parking spaces for visitors, close to the corner of the site from the existing entry point.

The proposal is not accompanied by a transport statement that addresses the existing and proposed levels of traffic generation and any resultant impact upon the nearby road network.

Firstly in terms of the parking geotechnical information has not been submitted that provides certainty on whether the level of excavation necessary to provide the parking is achievable. In addition the detailed access down to this area is close to 1 in 6 which is below the minimum acceptable gradient that Highways consider acceptable, which is 1 in 8. Both of these elements may have

implications on the building height and/or the actual ability to provide any such parking.

If the parking court is physically achievable the provision of 20 spaces for 14 units appears commensurate with the expectations of Local Plan Policy TA3 and the accompanying Appendix G, which sets out parking requirement guidelines. Notwithstanding this the absence of a transport statement provides an absence of understanding as to the requirements for servicing the commercial units and any impact upon the highway network and highway safety. It is noted that there is presently a hardstand to the front that appears capable of servicing the commercial element of development on site and this capability appears removed in the proposed scheme.

The absence of certainty in this matter is considered to present development that is contrary to Policies TA2, TA3 and Appendix G of the Local Plan.

**S106/CIL -**

As the proposal fails on wider issues, discussions with respect to planning obligations have not been progressed. The lack of appropriate planning obligations should be included as a reason for refusal because it is contrary to Policy SS7 (Infrastructure, phasing and delivery of development).

Precise details of obligations which would be required for an acceptable scheme in this location are awaited and will be reported in full to committee but may include:

Greenspace & Recreation  
Sustainable Transport  
Waste Management  
Lifelong learning

A scheme for 14 units on brownfield land does not trigger any affordable housing requirement.

**Conclusions**

In conclusion, the application site is located within a core tourism area as designated by the Torbay Local Plan 2012-2030. It is within an area that has a distinctive tourist character which is reinforced by its attractive setting with wide ranging sea views and location adjacent to Babbacombe Downs. The use of the property for commercial purposes with holiday flats makes an important contribution to the vitality and character of the area. The applicant has not demonstrated in the submission that the site lacks an appropriate range of facilities and that there is no reasonable prospect of it being used for tourism purposes, as required by Policy TO2 of the Local Plan.

It is recommended that the application be refused for its failure to maintain or

enhance the provision of tourism facilities or accommodation on what is a prominent site within a Core Tourism Investment Area, the harm it causes to the character and appearance of the Babbacombe Downs Conservation Area and the setting of a listed building, the poor residential environment it proposes, the inadequate vehicular access, and uncertainty over the geotechnical aspects, potential flood risk, and lack of planning obligations to mitigate the effect of the development on local infrastructure.

**Recommendation:**

Refuse.

**Condition(s)/Reason(s)**

01. The proposal would result in the loss of holiday accommodation and a reduced provision of commercial floorspace and facilities supportive of the holiday character within a prominent site in a Core Tourism Investment Area. It also fails to demonstrate that there is no reasonable prospect of the site being used or redeveloped for tourism or tourism related purposes. For these reasons the proposal does not maintain or enhance the area designated for its tourism importance and is contrary to policy TO1 and TO2 of the Torbay Local Plan 2012-2030.

02. The proposal, due to the massing and form, which is of a contemporary design that is not considered to respond to context, is considered harmful to the character and appearance of the Babbacombe Downs Conservation Area, contrary to Policy SS10 and DE1 of the Local Plan. The proposal, by virtue of its location where it would sit prominently in the skyline on higher land to the northwest of the Babbacombe Cliff, a Grade 2 Listed Building off Beach Road, is also considered harmful to the setting of this listed building, contrary to Local Plan Policy HE1. The proposal is also considered inconsistent with national guidance (NPPF) as it fails to promote and reinforce local distinctiveness and respond to the historic environment (para 60-61), and fails to take the opportunity to enhance or better reveal the significance of the heritage asset (para 137). It is also considered to conflict with the premise that any harm to a heritage asset should have clear and convincing justification as heritage assets are irreplaceable (para 132).

03. The proposal, due to the proximity of residential units to potentially noise-generating commercial units, the arrangement of residential units where there is the potential for inter-looking at close proximity through windows, where the proximity of the building would create overshadowing and a poor outlook for the adjacent occupiers and users of the Coombe Court Hotel (Number 67 Babbacombe Downs Road), is considered to create a poor residential environment and impact local amenity, contrary to Policies DE3 of the Local Plan.

04. The proposal, due to the inadequate access to the underground parking that fails to meet the maximum gradient requirement of 1 in 8, in the absence of detail that prohibits due understanding and consideration of the highway safety implications of the new access, due to the likely loss of on-street parking to facilitate the proposed access and associated visibility, and in the absence of geotechnical detail that determines that the necessary level of excavation to achieve the underground level is achievable, is considered unacceptable on highway and parking grounds, contrary to Policies TA2 and TA3 of the Local Plan.

05. The proposal fails to demonstrate that it will not result in an increased risk of flooding within a Critical Drainage Area with an absence of information and justification as to why infiltration testing and the provision of a sustainable surface water drainage system has not been explored. Therefore, the proposal does not accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030, or paragraphs 102 and 103 of the NPPF.

06. In the absence of any signed legal agreement or upfront payment under Section 106 of the Town and Country Act 1990 (as amended), the scheme fails to satisfy the objectives of Local Plan Policy SS7 and the Council's SPD "Planning Contributions and Affordable Housing: Priorities and Delivery" and the associated "Update 3 Paper", which seek to secure the delivery of physical, social and community infrastructure directly related to the development and necessary to make it acceptable in spatial planning terms. In the absence of secured contributions in line with the adopted policy the proposal is therefore contrary to Policy SS7 of the Torbay Local Plan 2012-2030 and guidance outlined within paragraphs 203 and 204 of the National Planning Policy Framework.

#### **Relevant Policies**

TO1 - Tourism, events and culture  
TO2 - Change of use of tourism accommodation  
DE1 - Design  
DE3 - Development Amenity  
SS10 - Conservation and Historic Environment  
HE1 - Listed Buildings  
ER1 - Flood Risk  
TA2 - Development access  
TA3 - Parking requirements  
SS7 - Infrastructure, phasing and employment

**Application Number**

P/2016/0384

**Site Address**

Land At  
Princess Gardens  
Off Torbay Road  
Torquay  
TQ2 5EY

**Case Officer**

Mrs Ruth Robinson

**Ward**

Tormohun

**Description**

Change of use of land for the temporary erection and operation of a 50m observation wheel and associated ancillary development until 31 October 2016

**Executive Summary/Key Outcomes**

This is the fifth application for temporary consent for the erection of a 50m observation wheel with ticket office and ancillary coffee and crepe unit on land within Princess Gardens immediately adjacent to the Pavilion.

The former is a Grade II entry on the Register of Historic Parks and Gardens. The latter is a Grade II listed building.

The applicant wishes to commence work in time to have the Wheel in place for the Spring Bank holiday and proposes to remove it by the 31st October 2016.

The original report to Committee, in August 2012 confirmed 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.

Short term occupation of the site by the Wheel was however welcomed as it was considered it would enhance the tourist attraction of the area and any adverse impacts would be short lived and reversible. It also introduced some vitality to the area pending the resolution of the proposals for the Pavilion.

The report did however stress that any future, more regular use of the Gardens by the Wheel should be subject to a more rigorous assessment as requested by Historic England and linked to mitigation to achieve some conservation benefit for the 'at risk' gardens.

This request for a further period of occupation has come about as a 'stop gap' measure.

The applicants have been awarded a 5 year contract by the Council for the siting of an 'attraction' elsewhere within the Gardens.

A planning application was submitted in March to provide for a 5 year period of occupation by a larger observation wheel (55m in height) in the Gardens on a site located between the War Memorial and the Princess Theatre.

It was not accompanied by the required justification, a more rigorous assessment of its impact or any mitigation as has been repeatedly stressed in previous considerations of the applications on the site.

Providing this would have taken some considerable time and carried a risk that the Wheel would not have been in place for the summer season. The applicant took the decision to withdraw that application and resubmit for a further summer season adjacent to the Pavilion.

Concerns have been expressed about the impact of vehicles loading and moving the Wheel on the structural stability of the site. This could be ameliorated through a traffic management plan and more effective operational control during construction and dismantling. This can be addressed by means of a condition. At the time of writing, no objections have been received from residents who overlook the site regarding the impact on amenity. It was concluded, in dealing with previous applications on the site, that erosion of privacy was not a sustainable objection to the scheme but that light pollution was and mitigation in the form of vinyl overlays to the pod lighting was secured by condition. These measures are included in the current proposal.

At the time of writing, one letter of support has been received.

Given the delay in resolving the Pavilion proposals, the benefits of short term occupation of this part of the gardens, as previously expressed and the benefits to tourism that have accrued from the Wheel being in place, then a further temporary period of consent is recommended.

### **Recommendation**

Approval, temporary consent be granted until 31st October 2016. 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 3rd June 2016.



### **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 mid May until the 31st October 2016.

### **Summary Of Consultation Responses**

*Historic England:* Whilst a formal response has not been received at the time of writing, HE 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. HE 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.

They have suggested in previous responses that the impact of the structure should be assessed against the criteria in EH's Temporary Structures in Historic Places' if it becomes more permanent in nature. It is also suggested that as Princess Gardens is 'at risk' some mitigation or Conservation gain should be achieved.

*Garden History Society:* No response to current application at the time of writing but did not wish to object to previous applications due to the temporary nature of the scheme.

*Environment Agency:* Raises no objection to the scheme.

*Environmental Health:* Providing the light pollution mitigation continues and hours of operation controlled then would raise no objection to the renewal of temporary consent.

*The Principal Natural Environment Officer:* Has suggested that a highway management plan is required to ease access to the site and minimise damage to pathways. The impact of axel loading on the stability of the site should also be assessed.

### **Summary Of Representations**

One letter of support has been received at the time of writing. This has been sent electronically for Members 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.
- P/2015/0042: Temporary consent for period March-November 2015.

### **Key Issues/Material Considerations**

This is the fifth application for temporary consent for the erection of a 50m observation wheel with ticket office and ancillary coffee and crepe unit on land within Princess Gardens immediately adjacent to the Pavilion.

The former is a Grade II entry on the Register of Historic Parks and Gardens. The latter is a Grade II listed building.

The applicant wishes to commence work in time to have the Wheel in place in time for the Spring Bank holiday and proposes to remove it by the 31st October 2016.

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 three further periods of temporary permission granted each time for a slightly longer period.

This application represents the fifth request for permission for temporary use of the site for the Observation wheel.

Relevant policies are paragraphs 132-134 of the NPPF and policies HE2 and SS10 of the Adopted Torbay Local Plan 2012-2030 in respect of the impact on the heritage asset and policy DE3 in terms of the impact on amenity.

There are three key issues to be considered, the impact on the heritage asset, on amenity and on the structural stability of the site.

#### **1. Impact on the Heritage Asset.**

It has always been accepted that a permanent occupation of the land adjacent to the Pavilion by the Observation Wheel would be, in the long term, harmful to the

architectural and historical character of the site.

It is likely, however, that this will be the last request for temporary occupation of this particular site.

This is primarily due to the fact that the applicants have been awarded a 5 year contract by the Council for the siting of an 'attraction' elsewhere within the Gardens. It is also anticipated that works could commence on the restoration of the Pavilion which would preclude continued occupation of this site by the Wheel in the event that planning permission and listed building consent are granted for these proposals later on this year.

A planning application was submitted in March this year for the erection of a larger, 55m Observation Wheel on the site identified in the Council tender documents. This is located between the War Memorial and the Princess Theatre and would occupy a majority of the plot and be positioned parallel to Rock Walk.

However no evidence was submitted to test or understand the impact on the wider heritage asset nor did the application include any mitigation to offset the impact of the Wheel on the Gardens other than the redevelopment of the shelter demolished to make way for the structure along with redevelopment of the partner shelter in a style to match.

This does not comply with HE advice over the last 4 years which has consistently stressed the need for the impact on the Gardens and the associated listed structures to be properly understood and for there to be adequate mitigation if any more permanent occupation is to be shown to be acceptable. This has been reflected in all Officer Reports to Members as being key in any move to introduce a more permanent attraction within the gardens.

There is a substantial amount of evidence required to satisfy both the LPA and HE that this represents an acceptable long term alternative location for the Observation Wheel. Some consultation with affected residents overlooking the site has also been recommended.

In order not to lose the Wheel for this season the applicant decided to withdraw that application and to resubmit for a further temporary period of occupation on the site adjacent the Pavilion.

It is only this temporary use which is the subject of this application.

Temporary occupation of this site pending works to restore the Pavilion was, in all previous reports to Members, argued to be beneficial as it would compensate to some degree for the loss of vitality and activity arising from the closure of the Pavilion and enhance the attractiveness of the wider area for tourists and residents alike. The short term and reversible nature of the impact

were also important considerations.

The wheel has been immensely popular, has attracted tourists, created a dramatic and striking feature within the townscape and has generated economic benefits for the town in terms of increased spend. Once removed, the site has been quickly and satisfactorily reinstated to its former condition.

In the circumstances, given the economic benefits of the wheel and the further delay in works to restore the Pavilion, it would seem reasonable to allow a further temporary period of occupation of this site.

Whilst there is harm to the heritage asset this is 'less than substantial' particularly in view of its temporary nature and this can be offset by public benefit under paragraph 134 of the NPPF given the economic and tourism benefits.

It still remains the case however that due to its proximity to the Grade II listed building a permanent use of the this site would not be acceptable as it would substantially detract from its architectural and historic quality and due to its location and size, impede restoration proposals coming forward.

## **2. Amenity.**

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.

## **3. Structural Stability of the site.**

The occupation of the site by the Wheel itself 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.

There is some concern that the weight and size of vehicles delivering the Wheel may have caused some damage to the structural integrity of the gardens and the means of accessing the site appears to have caused some damage to footways and kerbs. These matters are largely of an operational nature and should be picked up in the lease.

It is important that the site is reinstated following occupation and this needs to be secured by condition.

## **Conclusions**

It has always been accepted that a permanent occupation of the land adjacent to the Pavilion by the Observation Wheel would be, in the long term, harmful to the architectural and historical character of the site.

It is likely, however, that this will be the last request for temporary occupation of this particular site.

The applicants have been awarded a 5 year contract by the Council for the siting of an 'attraction' elsewhere within the Gardens.

This request for a further period of occupation of this site by the Wheel has come about as a 'stop gap' measure pending more detailed investigation into the suitability of this site in terms of its impact on the historic and architectural character of the listed gardens.

Given the delay in resolving the Pavilion proposals, the benefits of short term occupation of this part of the gardens and the benefits to tourism that have accrued from the Wheel being in place, then it is not considered that a further period of temporary occupation will compromise the aims and objectives of policies HE2 and SS10 of the Adopted Local Plan 2012-2030.

## **Recommended:**

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 DE3 of the Adopted Torbay Local Plan 2012-2030.

02. The permission, allowing occupation of the site by the observation wheel, shall be for a temporary period only and shall expire on or before the 31st October 2016. 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 HE2 and SS10 of the Adopted Torbay Local Plan 2012-2030.

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 in accordance with policy DE3 of the Adopted Torbay Local Plan 2012-2030.

04. Prior to the wheel arriving on site a traffic management plan and details of the operational control during construction and dismantling shall be submitted to and approved by the Local Planning Authority. The operation of moving the wheel onto and off the site shall accord with the approved details.

Reason: In order to protect the structural integrity of the site, in accordance with Policies HE2 and SS10 of the Adopted Torbay Local Plan 2012-2030.

#### **Relevant Policies**

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**Application Number**

P/2016/0385

**Site Address**

28 Shiphay Avenue  
Torquay  
Devon  
TQ2 7EA

**Case Officer**

Mr Robert Pierce

**Ward**

Shiphay With The Willows

**Description**

Side Extension (Re Submission of P/2016/0093)

**Executive Summary/Key Outcomes**

The site contains a detached gable fronted bungalow which stands on the south side of Shiphay Avenue. The property has a small flat roofed dormer window in the front elevation and a larger one to the rear. It also has a flat roofed garage attached to the side of the property which is set back approximately 7 metres from the front of the gable.

The proposal is a revision to scheme which was recently approved by Members to form a flat roofed extension projecting out from the front of the existing garage and to convert the combined structures into additional ancillary living accommodation. The previous scheme came forward of the garage by 3.9 metres whereas this revision brings the extension forward by 7 metres in line with the front gable.

The revised proposal is considered to maintain the domestic character and appearance of the bungalow and will result in a building which will sit comfortably within the general scale of properties in the locality. There would be no discernible impact upon neighbour amenity. The proposal will result in the loss of onsite parking but ample provision will remain within the frontage of the property.

The application is included on the agenda as it has been submitted by one of the Council's Building Control Officers.

**Recommendation**

Approval

**Statutory Determination Period**

The 8 week determination date expires on 2nd June 2016

### **Site Details**

Detached dormer bungalow set within a residential street that currently includes a mix of one and two storey properties of varying scale and character. Parking is provided to the front and there is an attached garage to the side. The principal amenity space for the property is set to the rear within a large garden which backs onto the grounds of the Torquay Girls Grammar School.

### **Detailed Proposals**

A revised scheme for a single storey flat roofed extension attached to the front of the existing garage at the side of the property, it will project forward by 7metres in line with the front gable of the existing bungalow. (The recently approved scheme came forward by 3.9 metres). The extension will provide the opportunity to revise the habitable space within the dwelling by converting the combined structures into additional ancillary living accommodation. The extension will be rendered to match the parent property and will have a matching UPVC triple window and door set within its front elevation.

### **Summary Of Consultation Responses**

None.

### **Summary Of Representations**

None.

### **Relevant Planning History**

P/2016/0093            Side extension approved - 22/03/2016

### **Key Issues/Material Considerations**

Key issues are considered to be the visual impact on the streetscene, any impact on neighbouring living conditions, loss of onsite car parking and flood risk.

#### **Visual impact -**

The area has a mixed building form with no overriding architectural style. There is, however, a loosely established scale for the properties with gaps between. Considering the mixed form of the area, the revised proposal to form a flat roofed extension in line with the front gable will sit comfortably to the side of the property.

Although the extension would no longer be set back behind the front of the property and it would still be ancillary to the appearance of the dwelling.

The adjacent dwelling is two storeys high and and therefore a sense of space will remain between both properties.

As such, the proposal is in accordance with Policy DE5.

#### **Amenity issues -**

The building line to the side will be maintained along the party boundary and the



proposed extension would not notably alter the relationship between plots in terms of light received or the outlook enjoyed. There are no windows on the side elevation of the proposed extension and therefore privacy level will be maintained.

As such, the proposal is in accordance with Policy DE3.

#### **Car Parking -**

The proposal will result in a loss of off-street car parking however there will still be more than adequate car parking space within the frontage of the property, as it is capable of accommodating several cars.

As such, the proposal is in accordance with Policy TA3.

#### **Flood risk -**

A flood risk assessment has been submitted that confirms surface water will be disposed of by means of soakaways. Due to the site being within the critical drainage area it would be appropriate to include a condition, to the planning permission (if granted), to require that surface water drainage is addressed in accordance with the submitted flood risk assessment.

As such, the proposal is in accordance with Policies ER1 and ER2

#### **Conclusions**

The revised scheme will result in an acceptable addition to the property that does not harm the character or appearance of the area, will not have any adverse impact on neighbour amenity and will retain sufficient on site car parking. The proposal is consistent with the objectives of Policies DE1 (Design), DE3 (Development Amenity), and DE5 (Domestic Extensions), ER1(Flood Risk)and ER2 (Water Management), as such it is recommended for planning approval subject to a condition to secure that surface water drainage is addressed in accordance with the submitted flood risk assessment

#### **Condition(s)/Reason(s)**

01. In accordance with the submitted Flood Risk Assessment dated 5th April 2016, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policy ER1 of the Torbay Local Plan 2012- 2030 and paragraph 103 of the NPPF.

02. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no windows, doors or other openings, other than those shown on the approved plans, shall be constructed with the side (east) elevation of the development hereby approved.

Reason: In the interests of privacy of the neighbouring property, in accordance with Policies DE3 and DE5 of the Torbay Local Plan 2012-2030.

**Informative(s)**

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

**Relevant Policies**

- DE1 - Design
- DE3 - Development Amenity
- DE5 - Domestic extensions
- ER1 - Flood Risk
- ER2 - Water Management